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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~323.~~ 96

S. M. GATES, A. M. WOOD, AND M. McKNIGHT, AS GATES, WOOD & McKNIGHT, PLAINTIFFS IN ERROR,

vs.

R. C. BRINKLEY. Goodloe

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

FILED JANUARY 16, 1877.

SUPREME COURT OF THE UNITED STATES.

No. 323.

S. M. GATES, A. M. WOOD, AND M. McKNIGHT, AS GATES, WOOD & McKNIGHT, PLAINTIFFS IN ERROR,

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IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

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THE STATE OF TENNESSEE:

Pleas before the supreme court of said State for the western division thereof, at Jackson, on the 4th Monday in September, A. D. 1875.

Present, the honorable A. O. P. Nicholson, chief justice, and Robert McFarland, Thomas J. Freeman, James W. Deaderick, Peter Turney, and John L. T. Sneed, associate judges.

Be it remembered, that heretofore, to wit, on the 4th day of May, 1871, the following transcript of a record was filed in the office of the clerk of the supreme court for the western division of said State, at Jackson, to wit:

Second chancery court.

GATES, WOOD AND MCKNIGHT } v. R. C. BRINKLEY. } ※ 103 Shelby chan'y D. Final ※ 2586.

STATE OF TENNESSEE,
County of Shelby:

The Honl. Edwin M. Yerger, chancellor, presiding.

2 TRANSCRIP' OF THE RECORD IN THE ABOVE CAUSE.

Cost bond.

We, S. M. Gates et al. (firm of Gates, Wood and McKnight), and , acknowledge ourselves indebted to R. C. Brinkley in the sum of two hundred and fifty dollars, to be void if the said S. M. Gates et al., complainants in a bill which has this day been filed in the chancery court of Memphis against the said R. C. Brinkley, shall pay all such costs as may be awarded against them by the court in its decrees and orders in said bill.

This 25th day of July, 1868.

GATES AND WOOD. (In) [SEAL.]
W. JOYNER. [SEAL.]

3 (Endorsement on cost bond:) Filed 25th day of July, 1868. A. Alston, cl'k and M.

Injunction bond.

We, S. M. Gates et al. (firm of Gates, Wood and McKnight), and , acknowledge ourselves indebted to R. C. Brinkley in the sum of seventy-five hundred dollars (7,500).

The condition of the above bond is such that whereas the said S. M. Gates et al., complainants, have this day filed their bill in the chancery court of Memphis against the said R. C. Brinkley, defendant, and obtained an order for the issuance of the writ of injunction, in accordance with said order, upon the execution of this bond: Now, if the said complainant shall comply with and perform the orders and decrees
4 of the court in case said injunction is dissolved, and shall pay to said defendant such damages as shall be awarded to or recovered by him for the wrongfull suing out of the injunction, and also such costs

as may be awarded to them by the court, then this obligation to be void.

Witness our hands and seals this 25th day of July, 1868.

GATES AND WOOD. (In liquidation.) [SEAL.]
W. JOYNER. [SEAL.]

(Endorsement on injunction bond:) Filed 25th July, 1868. A. Alston, C. and M.

Injunction bill.

To the Hon. Wm. M. Smith, chancellor of the chancery court of Memphis:

S. M. GATES, A. M. WOOD, AND Milton McKnight, firm of Gates, Wood and McKnight, citizens of Shelby County, Tennessee, complainants, non-residents of Tennessee,

vs.

R. C. BRINKLEY, CITIZENS OF SHELBY COUNTY, Tenn., def't.

Your complainants state that they were partners in trade and doing business in the city of Memphis in the year 1859, and that on or about the 1st day of July, 1859, they and defendants entered into a certain contract of lease for the period of five years, of a certain lot or parcel of ground in said city, on which stood a large building suitable for stores, offices, &c., which together with the conditions and terms of said
6 contract is set forth in the duplicate of said lease, the original being in the hands of the said R. C. Brinkley with the written consent of said Brinkley to complainants to sub-let or re-rent said stores, &c., which said duplicate and endorsement of written consent thereon are hereinwith filed, marked Exhibit A hereto, and made part thereof.

Your complainants charge that in view of said lease, and about the time the contract was entered into, and both before and after, they expended considerable sums in making valuable improvements to said buildings for the purpose of re-renting, with the knowledge and approval of the said R. C. Brinkley, and for said purpose and with said knowledge and approval introduced fixtures, &c., and account whereof is set forth in Exhibit B hereto, which is made part hereof.

7 Your complainants charge that said R. C. Brinkley entered into said contract and executed said written instruments, and these complainants executed their notes in pursuance of its terms and delivered them to the said R. C. Brinkley.

Complainants charge that they have paid up all of said notes, either to R. C. Brinkley or his assigns, up to the one falling due October 1st, 1862, which, with the other seven of $1,250.00, are not paid, and are supposed to be in the hands or under the control of defendant R. C. Brinkley.

Your complainants charge that on or about the 1st of August, 1862, the said property in said lease mentioned, because of said R. C. Brinkley's acts, was reported and seized by the United States author-
8 ities, and your complainants deprived of the quiet and peaceable possession of the same, and held by the authorities until on or about July 11th, 1863, or before or after that time, when the said R. C. Brinkley, or his agent, having complied with the conditions of the United

States Gover'ment or its authorities, got possession of the said premises and kept possession of the same, and rented them out to other parties and collected rents for the same until the termination of the lease.

Your complainants charge that the said R. C. Brinkley both sympathized with the rebels or Confederates and Confederate authorities in armed resistence to the United States and contributed of his means to the cause and aided and *absited* the rebellion.

Complainants charge that by reason of these, defendant's, acts
9 and his abandonment of Memphis and his property upon the approach of the national forces of the United States, the said property was reported, seized, and held until he or his agent got possession of the same.

Complainants charge that he kept possession and collected rents until the termination of the lease, and made no endeavor *the* restore the quiet and peaceable possession of the premises to your complainants; but, on the contrary, kept possession and collected the rents therefor.

Complainants charge, as they are *enformed*, advised, & believe, that the said premises were reported, seized, and held by the paramount authority of the Government of the United States in pursuance of an act of Congress 17th July, 1862, and under the proclamation of the
10 President of the United States of July 25th, 1862, because of the aforesaid acts of defendant R. C. Brinkley, and through no fault or act of complainants.

Your complainants charge that the said R. C. Brinkley continued to hold said notes given for the time the said premises were so held by the United States authorities and by himself, although the consideration therefor therein failed, and he not only failed to keep your complainants in peaceable and quiet possession of the same, but was the cause of the ouster, eviction, and dispossession of complainants by the reason of his acts, and through no fault or act of compl'ts.

Your complainants charge that by reason of the premises they demanded payment of the said R. C. Brinkley for the improvements,
11 fixtures, &c., for which the sum set forth in Exhibit B, to wit, $\$2{,}763\frac{48}{100}$, was given and paid, which they are advised and believes they had a right to demand, by reason of the premises, and especially by reason of the nature and character of the contract of lease, Exhibit A, and the ouster, dispossession, and eviction of complainants by reason of the said wrongful acts of the defendants and his use and enjoyment of the possession and rents of the same from the time of re-entry by him, in 1863, which he refused to pay (and still refuses to pay), stating, in substance, that complainants ought to rest satisfied in the fact that payment was not demanded for the remainder of the time after the ouster, eviction, and dispossession, virtually admitting complainants' rights to said fixtures, &c., but insisting that he ought not
12 to account for the said improvements and fixtures, and in consideration of the fact that he did not demand payment of the notes.

Your complainants charge that afterwards, and recently, the said R. C. Brinkley has instituted suits against your complainants, S. M. Gates and A. M. Wood, on five of said notes, in the municipal court of Memphis; in one suit he has sued your said complainants on three of said notes, to wit, those falling due October 1st, 1862, January 1st, 1863, and April 1st, 1863, and in the other suit on two of said notes, to wit, those falling due January 1st, 1863, and October 1st, 1863, in fraud of complainants' rights and in violation of equity, as complainants are advised and believe.

13 Your complainants state that they suppose R. C. Brinkley has

not in has possession the remaining three notes falling due on the 1st January, 1864, 1st April, 1864, and 1st July, 1864, and that he holds them in violation of complainants' rights, and said R. C. Brinkley may institute suit on the same as he has done on the others.

Your complainants charge that the said R. C. Brinkley, by reason of his wrongful acts as aforesaid, has put your complainants to the trouble and expense of litigation in defending said suits which are now pending in said municipal court, and may attempt further to do so by bringing suit upon the remaining notes thus wrongfully withheld.

14 Complainants state that R. C. Brinkley is not arraigned for trial or sued in any court for reason of his participation in the rebellion, and therefore, as they are advised and believes, can safely answer the allegations of the bill, and cannot decline to do so.

Your complainants are advised and believes that they are entitled to have an account of the said improvements and fixtures, etc., so put upon and in said premises, as per Exhibit B, and further damages they sustained by reason of his, R. C. Brinkley', wrongful acts, and a delivery up and cancellation of said notes sued upon and those still held by him.

Complainants charge that said R. C. Brinkley made some agreement with the Federal authorities upon the restoration of said property, and may have collected or attempted to collect rents from the govern-

15 ment for the period it was in the hands of the government.

Premises considered, complainants pray that R. C. Brinkley be made a party defendant hereto; that he be served with proper process and required to plead, answer, or demur, as by law prescribed, and each and every allegation minutely and particularly as if specially interrogated thereto answer under his corporal oath.

Complainants pray that he be required to state when he got the property back, and how and on what terms; let him set them forth minutely. Let him state did he or not, through his agent or himself, enter into an agreement with the United States authorities touching the restoration of said property; if so, what; and whether or not he cancelled rents from the government and made an agreement to do so.

16 Complainants pray for the delivering up and cancellation of said notes sued upon and in the hands and under the control of the said R. C. Brinkley, set forth herein.

Complainants pray for all account for the value of the improvements they put upon said property, of the fixtures they placed thereon, &c., &c., and for the damages they have sustained in the premises.

Complainants pray for a writ of injunction enjoining said R. C. Brinkley from further prosecuting said suits on said notes or any suits thereof, and from endorsing or assigning or transferring or in any disposing of said notes other than under the orders of your honor, and from instituting suit upon any of those he now holds upon which he has not yet commenced suit.

17 This is the first application for an injunction.

Complainants pray for such other and further relief, general and special, as the facts justify and to equity belongs.

And in duty bound they will ever pray, and c., &c.

FINLY AND KELLAR,
Sol's for Complainants.

STATE OF TENNESSEE,
County of Shelby:

Personally appeared before me, A. Alston, clerk and master of said court, S. M. Gates, one of complainants in foregoing bill, who made oath

in due form of law that the matters and things therein stated are true to the best of his knowledge, information, and belief.

SAM. M. GATES.

Sworn to and sub before me July 23rd, 1868.
18 R. J. BLACK.
D. Clk and Master.

Upon complainants executing bond with security in the sum of $7,500 the clerk and master will issue the writ of injunction in pursuance of the prayer of this bill.

W. H. SMITH, *Chancellor.*

JULY 24*th*, 1868.

EXHIBIT A.

(Duplicate.)

This indenture of lease, made & entered into, in duplicate, this first day of July, 1859, by and between Robert C. Brinkley, of Memphis, Tennessee, of the first part, and Messrs. Gates and Wood and McKnight, of Memphis, Tennessee, of the second part, witnesseth:

19 That the said party of the first part doth hereby demise and lease unto the said party of the second part the following-described lot or parcel of land in the city of Memphis, in Shelby County, Tennessee, with the privileges and appurtenances thereunder belonging, to wit, the storehouse on Main street, bounded as follows: Beginning forty-two feet and six inches south from the northeast corner of lot No. 100, and runs thence west with the south wall of the storehouse leased by said R. C. Brinkley to S. Mansfield and Co. one hundred and forty-five feet and a half to Frount alley; and thence south with the east line of said alley one hundred and four feet, to Monroe street; and thence east with the north line of Monroe street thirty-eight feet; and thence north about eighty-three feet to a point opposite and seven feet

20 west of the north wall of the house now occupied by Messrs. Stovall and Mitchell; and thence east with said north wall of the store occupied by said Messrs. Stovall and Mitchell one hundred and seven feet six inches to Main street; and thence north with west side of Main street seventy-one feet and six inches to the beginning.

To have and to hold the said premises for the term of five years from and after the first day of July, eighteen hundred and fifty-nine (1859), beginning on the first day of July, 1859, and ending on the last day of June, 1864, inclusive.

The said party of the second part yielding and paying therefor the annual rent of $5,000 (five thousand dollars) each and every year during said term.

21 In consideration whereof the said party of the second part agrees to pay the said party of the first part, his executors and assigns, the said annual rent of five thousand each and every year as aforesaid, payable quarterly, payable on the first day of October, January, April, and July of each and every year during said term, for which the said party of the second part has executed their promissory notes of this date.

And the said party of the second part agrees to deliver up to the said party of the first part, his heirs or assigns, said leased premises at the end of said term in as good a condition as when received, except ordi-

nary wear and deterioration or distruction by fire, and to remain liable for rent until all of the said premises are delivered up.

22 The party of the second part agrees that he will not assign or underlet said premises, or any part thereof, without the written consent of the first party, his executors, or assigns.

And it is further agreed that if the party of the second part, executors, or assigns, shall fail to pay any installment or part of said rent at maturity and for ten days thereafter, or shall assign or underlet all or any part of said premises without the written consent of the said party of the first part, his executors or assigns, then for any such default to pay, or for any such assigning or underletting, without the written consent of the party of the first part, his executors or assigns, the said party of the first part may at his option hold this lease forfeited and void, and may re-enter and take possession of all of said premi-

23 ses and hold the same for the balance of said term in his own right, without first demanding the payment of said rents herein imposed on or to be made by the second party, and without demanding the possession of said premises.

The second party hereby waives all necessity for such demand. The proof of payment of rent shall be upon the second party in case of controversy.

In case of re-entry by the first party, his executors or assigns, for any forfeiture under this lease, or in case of destruction of said building by fire, all installments of rent from and after next pay-day succeeding such re-entry shall be released.

R. C. BRINKLY. [L. S.]
GATES, WOOD AND MCKNIGHT. [L. S.]

24 (Endorsement on lease:)

MEMPHIS, *July 5th*, 1859.

Messrs. Gates, Wood and McKnight are hereby authorized to rerent such portions of the tenement herein specified as they may desire during the term of this lease.

R. C. BRINKLEY.

R. C. Brinkley, esq., to Gates, Wood and McKnight, Dr.

1859.			
Jan'y	27th.	To cash paid S. C. Mount, bill shelving and counters, Main street house	$180 00
Mar.	19th.	To cash paid S. Mansfield, bill for closing window	100 00
Jun.	20th.	" cash paid Jones and Tagg, bill painting in Main street house	20 00
25 Aug't		22. Cash paid for bill gass fixtures	38 75
"		27. " paid S. C. Mount, bill carpenters' work, fitting offices	880 00
Oct.	12th.	" paid Bell for pump & water fixtures	43 50
1860.			
January	21st.	" paid S. C. Mount, bill for wheel & fixtures	47 75
Feb'y	27.	" paid Jones and Tagg, bill painting offices, &c	282 25
March	16.	" paid J. Schoonover, bill plaste'ing offices	1,043 55
April	20th.	" paid our paat bill for awning, Main street	127 68
			$2,763 48

(Endorsement on injunction bill:) Filed 25th day of July, 1868. A. Alston, C. and M.

26 Entry on rules July 25, 1868.—July 25, '68, injunction issued.

Injunction.

The State of Tennessee to R. C. Brinkley, or agents and attorneys, greeting:

Whereas S. M. Gates, A. M. Wood et al. (firm of Gates, Wood and McKnight) hath lately exhibited their bill of complaint in the chancery court of Memphis against you, the said R. C. Brinkley, as defendant therein, and obtained from the honorable William M. Smith, judge, &c., an order that writs of injunction do issue according to the prayer of said bill:

We, therefore, in consideration of the premises, do strictly enjoin and command you, the said R. C. Brinkley, and all and every the persons before mentioned, and each and every of you, that you and every of you do absolutely desist and refrain from further prosecuting certain
27 suits now pending in the municipal court of Memphis, to wit, in favor of you and against complainants, on certain notes hereinafter mentioned: one suit on three of certain notes falling due October 1st, 1862, January 1st, 1863, and April 1st, 1863 (for $125.00 each), and another suit on two notes falling due July 1st, 1863, and October 1st, 1863, all made by complainants in favor of you, defendant, dated July 1st, 1859, as per lease filed with bill as Exhibit A, or any suits thereon, or assigning, transferring, or in any way disposing of said notes other than under the orders of this court, and from instituting suit upon any of the notes (of like tenor) you now hold, upon which an action has not yet been commenced, until the further order of our said court to the contrary; and this you shall in no wise omit under the penalty
28 prescribed by law.

Witness Auguston Alston, cl'k and master of our said court, at office in the city of Memphis this second Monday in May, 1868, and 92 year of American Independence.

A. ALSTON,
Cl'k and M.,
By BENJ. COLEMAN,
Dep. Cl'k and M.

(Endorsement on injunction:)

A. W. Taylor is hereby appointed special dep't' sheriff of Shelby County to execute and return the within process.

Given under my hand and seal this 25th day of July, 1868.

A. P. CURRY, [SEAL.]
Sheriff Shelby County.

Issued 25th day of July, 1868.

Cl'k and Master.

Came to hand 25th day of July, 1868.

Executed July 27th, 1868, by making known the contents of
29 the within to R. C. Brinkley.

A. P. CURRY,
Sheriff.
A. W. TAYLOR,
S. D. Sheff.

Entry on rules July 27th, 1868.—July 27th, 1868. Injunction executed on R. C. Brinkley.

A. P. CURRY, *Sh'ff.*
A. W. TAYLOR,
S. D. Sh'ff.

Entry on rules July 28th, 1868.—July 28th, 1868, spa. and copy, 1750. Sept. rules, 1868.

Subpœna.

State of Tennessee to the sheriff of Shelby County:

Summon R. C. Brinkley, if to be found in your county, to appear before the chancery court of Memphis, at the court-house in the city of Memphis, on the 1st Monday in September, 1868, next, then and
30 there to answer the bill of complaint of S. N. Gates et al., a copy of which accompanies this writ.

Herein fail not, and have you then and there this writ.

Witness, A. Alston, clerk and master of said court, at the office in the city of Memphis, this second Monday in May, 1868, and 92nd year of American Independence.

Clerk and Master.

D. C'k and Master.

(Endorsement on subpœna:) Issued 28th day of July, 1868. A. Alston, cl'k & m.

JULY 25TH, 1868.—Service of spa. and copy acknowledged for defendant.

HEISKELL, SCOTT AND HEISKELL.

Entry on rules July 28th, 1868.—July 28th, 1868. Service of spa. and copy acknowledge'.

HEISKELL, SCOTT AND H.

31 *Demurrer.*

GATES, WOOD AND MCKNIGHT
vs.
R. C. BRINKLEY. } Demurrer.

The defendant, by protestation, &c., demurs to the bill of the complainants, and for causes set' forth the following:

1st. That there is no matter equity set forth in said bill; the defence which he seeks to set up, if valid anywhere, being avoidable at law so far as the rents are concerned.

2nd. That the attempted defence is not avoidable either in law or equity, because the complainants does not set forth the process under which, or the officer by whom, the pretended seizure was made,
32 and because he does not show any authority by any officer of the United States under any process to seize the term of complainants in the premises for the act of the defendant, who had no interest in the said term but only in the reversion.

Third. That the case made in this bill for compensation for improve-

ments is no defence or cause of action or recoupment or set off, either in law or equity, because the complainants do not anywhere aver that there was any contract or agreement, express or implied, for compensation for improvements, nor that they were such improvements as were for the use of complainants in their trade, and that they made any effort to remove them as therein when the government took possession, nor before the term expired; nor does it in any way appear that the complainants are entitled to any compensation by law or in equity.

33 4. If it did so appear, it is matter cognizable at law either as matter of set off or recoupment, or as a substantive cause of action, and not in any way fit for a court of equity.

5th. That so much of the bill as seeks the delivering and cancellation of three notes does in no wise aver any ground of apperhension, or so much as any actual apperhension of the same being improperly used, or even of any intention on the part of the defendant even to sue upon the same, but indicates an intention on his part never to sue thereon declared by him by strong inference, without statement of any fact to give ground to doubt his sincerity, and so the bill shows no necessity for the intervention of this court by means of its extraordinary remedies.

34 For these and other reasons to be shown in agreement he prays that the bill be dissmissed, &c.

HEISKIELL, SCOTT AND HEISKELL, *Sol's.*

(Endorsement on demurrer:) Filed August 7th, 1868. A. Alston, C. and M.

Order overruling dem'r.

STATE OF TENNESSEE,
County of Shelby:

Be it remembered that at a term of the chancery court of Memphis, began and held at the court-house in the city of Memphis on the second Monday, it being the day of , 1868—present and presiding the honorable Wm. M. Smith—the following proceedings were had, to wit:

NOV. 30TH, 1868.

35 S. W. GATES ET AL.
vs.
R. C. BRINKLEY.

The demurrer of R. C. Brinkley in this cause being argued and understood by the court, and the same being considered not well taken, it is therefore ordered by the court that the same be and it is hereby overruled by the court, and defendant, R. C. Brinkley, is allowed ten days to answer, all of which is ordered by the court.

Order granting further time to answer.

STATE OF TENNESSEE,
County of Shelby:

Be it remembered that a term of the chancery court of Memphis, began and held at the court-house in the city of Memphis on
36 the second Monday in November, being the day of
18 ,—present and presiding the honorable Wm. M. Smith—the following proceedings were had, to wit:

DECEMBER 11TH, 1868.

S. N. GATES AND OTHERS
vs.
R. C. BRINKLEY & OTHERS. } 2928.

By consent of complainants further time is given defendants until Friday, December 18th, 1868, to file their answer.

Answer of R. C. Brinkley.

The answer of R. C. Brinkley to the bill of S. M. Gates et al., filed against this respondent in this honorable court.

37 Respondent for answer says:

He entered into the contract of lease with complainants exhibited with the bill. He believes the exhibit is correct. As to the improvements and fixtures which complainants say they erected and inserted in the building, respondent says that while he may have known that they were making such improvements and inserting such fixtures, and his best recollection at this distance of time is that he had such knowledge, yet it was with *with* or without his approval; he had nothing to do with it one way or the other. Complainants never consulted respondent in reference thereto. To the best of respondent' recollection never informed him of their intention to make them. He had no
38 contract with them in reference thereto. Complainants put them, whatever they were, in the house for their own convenience and use. They did simply what lessees are in the habit of doing in Memphis when they took a lease upon premises for business purposes; namely, of fitting them up in such manner as would best suit the particular business they intended to carry on.

Respondent denies that he ever in any manner assumed or agreed to be liable to complainants for the same. He denies all such liability, and is advised that no such liability exists.

Respondent found them in the building when he obtained possession thereof as hereafter stated, and says that complainants never took them out or attempted to remove them.

39 Respondents admits that complainants paid all the rent notes up to July, 1862.

There are three rent notes, each for $1,250, due, respect*fully*, January 1st, 1864, April 1st, 1864, and July 1st, 1864, which respondent herewith files and tenders to complainants.

Respondents has never intended to hold complainants liable therefore since their maturity, for the reason hereinafter stated, but has withheld them from collection, and it is by mere omission and oversight that they have not long since been handed to complainants for cancellation.

Respondent admits that he has instituted suit in the municipal court of Memphis upon the notes falling due October 1st, 1862, January 1st, 1863, April 1st, 1863, July 1st, 1863, and October 1st, 1863, which suit is still pending in said court, but is enjoined by the
40 process issued under complainants' bill. These notes are justly due, and he asks that judgment may be given in this cause for the whole amount, principal and interest, which they call for, by decrees of the court upon the hearing of the cause.

Respondent has no positive knowledge that the United States au-

thorities ever took possession of any part of the premises, and if it is material he requires strict proof. He has had information that the Federal authorities had possession of a portion of the premises, that part fronting on Main street, for a time previous to 1864, but of this he has no positive knowledge; as to the remainder of the building
41 he has no information outside of the allegations of the bill that the Federal authorities ever had possession. Upon this subject he has no knowledge or information, and calls for strict proof if it be a material enquiry. He positively denies that said premises, if seized at all in whole or in part by the military authorities of the United States, were seized and occupied because of the acts of this respondent. He denies that it was restored when this respondent or his agent, having complied with the condition of the United States Government or its authorities, got possession of the same.

Respondent never got possession of the same by himself or his agent from the United States authorities. When respondent returned
42 to Memphis in 1864 he found persons in possession who were not holding under complainants or pretending to hold under them, and he found that complainants had abandoned all claim over the premises, and respondent determined to release complainants from all liability for the rents from October 1st, 1863, to the termination of the lease, and to resume possession of the premises from that time forward, as complainants had abandoned them, but to hold them liable for the unpaid rents up to October 1st, 1863.

Respondent positively denies that any acts or conduct of his had anything to do with the occupation of any portion of the premises by the Federal authorities, if there was any such occupation.

Respondent did leave Memphis early in June, 1862, and did go
43 into the South, but he went on private business of his own, as he is advised he had the perfect right to do, and he returned to his home in Memphis in 1864, without molestation from the Federal authorites, but was in fact aided by them in making his return to Memphis, being furnished transportation by them for that purpose, and while hostilities were still existing between the United States Government and Confederate power. While in Memphis, upon and after his return, he remained wholly unmolested and was treated as any other citizen; indeed, his intercourse of every sort was as free and unembarrassed as any person's in the Federal lines could have been. His home was all the time in Memphis, where it was before the war, continued to be
44 during the war, and where it has been ever since. He denies that the Federal authorities had any right to seize the premises by reason of any acts of respondent, or any relations of respondent, to the United States Government, even if it should appear that any part of the premises were seized or occupied under pretence of a right so to do because of respondent's relations to the Federal authorities and government. But he denies the fact of the seizure and occupation, and if such there was, he denies that it had any connection with this respondent.

Respondent denies that he ever abandoned Memphis. Upon respondent's return to Memphis in 1864 he found complainants had abandoned the premises and other parties were in possession, and the posses-
45 sion was not obtained by respondent or any agent of his or by any knowledge or procurement of his from the Federal authorities, if they ever had possession of any part of the building.

Respondent is informed and believes that before or about the time or soon after the Federal occupation of Memphis, the complainants them-

selves voluntarily abandoned the premises, & he thinks it most probable that if there was any occupation of any part of the same by the Federal authorities it was because the' found the property unoccupied, and regarded it as abandoned property, whereas complainants could have remained in possession, and thus protected the property from occupation, if such be the fact.

Respondent is informed that many houses in Memphis were
46 taken possession of by the military authorities during the Federal occupation, simply because they were found to be unoccupied.

By delivering up the notes filed with this answer respondent makes no concession as to his legal right to hold complainants liable for them; but whether he has such right or not, as to which he is not advised, he has never intended to insist upon the legal right, if such there be, but has entertained the purpose of delivering them up to complainants ever since their maturity, and has *proposely* withheld them from collection; and it was by mere inadvertence that they were not long since handed over to complainants.

Respondent denies that complainant' were dispossessed by the
47 Federal authorities, and charges that if such were the fact, that they were dispossed because of their own act, and not because of any acts or conduct of this respondent.

Respondent did deny his liability to complainants for the fixtures, &c., and still does so. He never admitted, no' intended to admit, that they had any right to them; and all allegations to that effect in the bill are untrue. He is advised that they belong to him, and he had the right, after he obtained possession in 1864, to remove and dispose of them as he saw fit; and that not only is this so upon the legal aspect of the case, but that it is also just and equ'table, as he surrenders the rent
48 notes to complainants herewith filed, and gives up the rents to this extent.

Respondent denies that he ever collected, or attempted to collect, one dollar of rents from the United States Government for the premises in question.

In answer to interrogatories respondent says he returned to Memphis in 1864, and found one J. B. Cook in possession; that he professed to be in possession by reason of a possession of the premises having been obtained by the son of respondent, Hugh Brinkley, who was not acting, however, as agent of respondent, but is the fee-simple owner of the premises in connection with the daughter of respondent, Annie Snowden.

49 Respondent being tenant by the c'urtesy of said property, Hugh Brinkley obtained possession of the premises during respondent's absen*ts*, and with the knowledge or procurement of respondent; and finding Cook in possession respondent treated him as his tenant, and determined to release complainants from rents from and after October 1st, 1863.

To second interrogatory he says he did not by himself or agent enter into an agreement with the United States authorities touching the restoration of said property.

To third interrogatory he says he collected no rents from the United States Government, and made no agreement to do so.

And now, having fully answered, he prays that the court, by
50 decree at the hearing, may settle the whole matters in controversy

between complainants and himself, and a decree in his favor for the amount of said notes, and interest already sued upon, &c.

HEISKELL, SCOTT AND H.,
Sols. for Respond.

STATE OF TENNESSEE,
Shelby County:

Personally appeared before me Robert C. Brinkley, respondent in the foregoing answer, and made oath in due form of law that the facts therein stated of his own knowledge are true, and those stated upon information and belief he believes to be true.

R. C. BRINKLEY.

Sub. and sworn to before me June 16th, 1868.

A. ALSTON,
Clk. & Master.

51 (Endorsement on answer:) Filed 16th day of January, 1869. A. Alston, clerk and M.

Depo'n of J. T. Kellering, &c.

Chancery court of Memphis.

S. M. GATES ET AL.
vs.
R. C. BRINKLEY.

The deposition of Jeff. T. Kettering, a witness for complainant, taken in the presence of counsel for both parties, notice and all informalities waived, at office of clerk and M., on Friday, October 22d, 1869.

Being first duly sworn, he deposes and says:

52 Int. 1st. Please state your age, place of residence, and occupation.

Ans. I am 44 years of age; place of residents, in Memphis; & occupation, an auctioneer.

Int. 2. State where you were between July, 1862, and August, 1863.

Ans. I was in the U. S. rental office, as clerk, in Memphis.

Int. Please state who had charge of that office in July, 1863.

Ans. G. W. Vaughan, as rental agent.

Int. 4. Are you acquainted with the handwriting of said Vaughan, and states your means of knowing it.

53 Ans. I am acquainted with it from having seen him write in the U. S. rental office with him.

Int. 5. Please examine the papers here shown you and state in whose handwriting the body of it is, and whose the signature, and make it a part of your deposition.

Ans. I have examined it and file it herewith as a part of this deposition, and mark it Exhibit A. The body of the release is in my handwriting and the signature "G. W. Vaughan, rental agent," is his genuine signature.

Int. 6. State where the original of which that is a copy was at the time.

54 Ans. It was in the office.

Int. 7. Whose name was signed to the original and who attested the signature?

Ans. The original was signed by Hugh L. Brinkley and I attested it.

Int. 8. Were you acquainted with D. McGebborn? If so, state what position he held on or about the 1st day of August, 1862.

Ans. I was acquainted with a McGebbon. I don't know what his first nnme was. I was not very intimate with him. He was what we called an "outside man, hunting up and reporting property belonging to rebels or rebel sympathizers to the office of the rental agent." I
55 would not know his signature.

Int. 9. Do you know whether or not the United States rental office had possession of as abandoned property the block known as the "Brinkley Block," which has since been converted into the "Peabody Hotel," in part on the west side of Main street and on the north side of Monroe street, Memphis, and bounded on the north and west by alleys?

Ans. We did have possession of it.

Int. 10. How do you know that the rental agent had possession of the block during that period?

Ans. I know it from having received rents from that property.
56 We did the actual collecting of rents of that block and other property and accounting for it to the A. Q. M., U. S. A.

Int. 11. State as near as you can when the United States rental agents took charge of that block.

Ans. I can't say exactly.

Int. 12. What tenants do you remember of having collected rents from?

Ans. Prior to July 11, 1863, we collected rents of Mansfield, Francisco, and Wiggins, Ingraham, & Leis; others I can't *not* remember.

(All the foregoing questions & answers and the exhibit filed with the deposition are excepted to, the exhibit being of matters that have
57 no legal existence, and if it has, the witness shows that there was a record kept of it, and a certified copy of the record being the best evidence. And, further, that the exhibit has no connection with R. C. Brinkley, or the property in controversy, and therefore can have no effect on him.—HEISKELL, SCOTT and HEISKELL, for Brinkley.)

Int. 13th. State where the records, of which the exhibit filed is a copy, where when you last saw them, and whether or not they are now in existence to the best of your knowledge.

Ans. When I last saw them they were in the United States rental office. All books and papers pertaining to the rental office were
58 turned over to the United States Treasury Department. I afterwards saw a part of the books and papers belonging to the United States rental office near Keck's livery-stable, in Memphis, in an open box, in what I understood to be the Freedman's Bureau. There seemed to be no care taken of them at the time, the box being open in a corner of a room, open to all parties in the Freedman's Bureau establishment. The bureau, at the time I went to see the books, &c., near Keck's livery-stable, was under the control of an officer and guard of negroes, and I was not permitted to see the papers, &c., without permission first had and obtained from said officers. I went there as a citizen after
59 the close of the war. They *had* not seem *the* notice or care whether I took any papers or books after getting permission to examine them.

Cross-examination:

Int. Under whose ord'rs did G. W. Vaughan act?

Ans. First under the ord'rs of Captain Felch, A. Q. M., U. S. A., and next under the ord'rs of Capt. A. R. Eddy, A. Q. M., U. S. A. They were both military officers of the U. S. Government.

Int. What was that rental office; how did it act; how did it proceed to seize property?

Ans. It was an office established by the quartermasters of the
60 post here; they must have had ord'rs from higher authorities; they were sanct'oned by General W. T. Sherman, Maj. Gen'l, U. S. A., then in command here. The rental agents received orders from the post Q. M. to seize all property that had been abandoned by persons who were in any way aiding or abetting the rebellion. The rental officer then notified the tenants in possession of such property to come up to his office and pay rent to him for the same.

(That part of the foregoing answer where the witness says they must have had ord'rs from higher authorities is excepted to as being a mere opinion.—HEISKILL SCOTT and H., sol's for def't.)

61 Int. Was this the manner in which the property mentioned in the examination in chief was seized? And is this what you mean by its being seized and in the possession of the United States authorities?

Ans. It is the manner in which all property was seized; that is the manner in which this property was seized. And this is what I mean by its being seized and in the possession of the United S. authorities.

Int. What do you mean by saying that all property was seized in this manner?

Ans. I mean that all property seized by the rental agent in Memphis was seized in this manner.

62 Int. Do you know of your own knowledge that the property in controversy was seized in this manner by the rental agent?

Ans. I can't tell anything about it.

Re-examined:

Int. Did General Sherman pay any rents to the rental agent in Memphis in property so seized?

Ans. No, sir; but out of the rental office for houses occupied by him on this order we paid mon'y.

Further deponent saith not.

JEFF. T. KETTERING.

Sub. and sworn to Oct. 22, 1869.

E. B. McHENRY,
D. C. and Master.

63 Defe'ts excepts to the question and answer on re-examination as incompetent and irrevelent.

HEISKELL, SCOTT AND H.,
Sols. for Def't.

MEMPHIS, *July 11th*, 1863.

I hereby release all claims whatever which I have against tenants of property leased by the United States Government and this day surrendered to me for all rents accruing to me during the time of said tenancy under the United States Government, as well as for all differences in the rate of any rents originally served by lease and the amount received by the United States, looking only to the United States for compensation if any is hereafter allowed.

64 (Signed) HU. L. BRINKLEY.

Attest:
JEFF. T. KETTERING.

I certify the above to be a true copy of a release on file in this office.

G. W. VAUGHAN,
Rental Agent.

RENTAL OFFICE, *July 17th*, 1863.

(Endorsed:) Hu. L. Brinkly. Agreement of release or quitclaim against occupants of Brinkly block. U. S. lease, contract, & rental receipt from Aug't, '62, to Jun., '63.

STATE ILLINOIS,
County of Cook, ss:

G. W. Vaughan, of the county and State aforesaid, being duly
65 sworn, deposes and says that the annexed instrument is a true copy of an original release or quitclaim executed by Hu. L. Brinkley at the city of Memphis, in the State of Tennessee, on the 11th day of July, A. D. 1863; and this deponent further says that the copy of said instrument hereto attached was made by him and certified to as a true copy at the request of N. J. Wiggan, on the 17th day of July, A. D. 1863.

G. W. VAUGHAN.

Subscribed and sworn to before me this 16th day of Oct., A. D. 1866.

THOMAS HARTER,
Clerk Superior Court of Chicago, Cook County, Illinois.

[5 c. rev. stamp.]

(Endorsement on deposition:) Filed Oct. 22nd, 1869. A. Alston, C. and M.

66 *Deposition of N. J. Wiggan.*

Chancery court of Memphis.

S. M. GATES ET AL.
vs.
R. C. BRINKLEY.

The deposition of N. J. Wiggan, witness for complainant, taken before clerk and master at his office, in presence of counsel. Notice and all informalities waived.

And being duly sworn, N. J. WIGGAN deposes and says:

Int. 1st. Please state your age, occupation, and residence.

Ans. Aged 39 years; resident in Memphis; occupation, a merchant.

Int. In what part of the city are you and have you been doing business as a merchant?

67 Ans. At No. 307 Main, in what has been known as the Brinkley Block, corner Main and Monroe, and extending back to the alley, where I have been doing business for the last ten years.

Int. 3. Are you the owner of the tenements in which you have been doing business as a tenant?

Ans. I am and have been a tenant.

Int. 4. Who was your landlord from 1860 to 1864?

Ans. I have a lease from R. C. Brinkley until Oct., 1863, which was a five years' lease, expiring in October, 1863; after that I leased from Hu. L. Brinkley.

68 Int. 5. Did you or not pay rents un'terruptedly during that period and occupy as a tenant of R. C. Brinkley? If not, what interruption took place?

Ans. I did until July, 1862, when I paid to the government until some time in July, 1863; after which time I paid to H. L. Brinkley on the lease until October, 1863, when I leased it from him.

Int. 6. Why did you not continue to pay rents to R. C. Brinkley from and after July, 1862, up to July, 1863?

Ans. I was notified by the government, through its agent, to pay to them, they taking possession of the property at that time as abandoned property. Mr. Brinkley had left the city, and, as we supposed, gone South.

69 Int. 7. Did the government agents take possession of the whole block about the same time?

Ans. They did.

Int. 8. Please state whether or not they took possession of the property mentioned in the pleadings and in Exhibit A to the bill.

Ans. They did take possession of that set forth in the lease, Ex. A.

Int. 9. Please state how long the government authorities held this property, and how you remember this fact.

Ans. Until July 11th, 1863, which I remember from having re-
70 ceived a copy of an indemnifying bond given by H. L. Brinkley to the United States Government.

Int. 10. Where is that copy, and if you have it in your possession please make it a part of your deposition, and state the time as nearly as you can recollect when you got it, and whether or not it is a correct copy of the original.

Ans. It is Exhibit A to Jeff. T. Kettering's deposition, and is the same filed October 22nd, 1869, in this cause, as a copy of release by H. L. Brinkley, and certificate thereto of rental agent, and I make it Exhibit A to this my deposition. I received it from Mr. G. W. Vaughan, the rental agent, July 17th, 1869, which is a correct copy of the original on file in the rental office. Mr. Vaughan read the original to me and
71 gave me a copy of it, with his certificate thereto, which is above, Exhibit A hereto.

(Defendant's attorneys excepts to the above question and answer No. 10, and the paper filed as exhibit therewith, upon the same grounds that he excepted to same when made and exhibit to Jeff. T. Kettering's deposition.—HEISKELL, SCOTT AND HEISKELL, for def't.)

Int. 11th. Who got possession of the Brinkley block, including the property mentioned in the pleadings, leased by R. C. Brinkley to tenants when it was delivered up by the government authorities, and at what time, and how?

Ans. 11th. Hu. L. Brinkley got possession in July, 1863 (I
72 don't know under what authority further than that the rental agent, Mr. G. W. Vaughan, a few days before I got the above exhibit, told me that Hugh L. Brinkley had executed a bond to indemnity tenants, and he gave me this copy for my protection, and Vaughan said that Hugh L. Brinkley got possession of the property under that bond of which this was a copy then on file in his office prior), to which time I paid to the government rental agent, G. W. Vaughan, and after that time to H. L. Brinkley, on my lease.

(And defendant's counsel excepts to all the foregoing answer included

with brackets ( ) above as heresay.—HEISKELL, SCOTT and H., for def'ts.)

Adjourned until Tuesday, No. 2 inst., at 3 o'clock p. m.

73 R. J. BLACK, *D. C. and M.*

Int. Please state whether or not Hugh L. Brinkley delivered up or made a credit on the note executed by yourself to R. C. Brinkley all the lease from R. C. Brinkley for the unexpired portion of said lease from July 11th, 1863, until Oct. 1st, 1863, for which time you said you paid rents to him on said lease; in other words, how did you settle with Hu. Brinkley?

Ans. He gave me a receipt against the note.

Int. Did R. C. Brinkley recognize the agency of Hu. L. Brinkley? If so, how do you know it?

Ans. He did, by that receipt. He told me that it was all right;

74 that it was good against the note.

Int. State who were the tenants of the Main street portion of the property mentioned in the pleadings during the time the government held possession of the same.

Ans. Tichner and Co., in the fall of 1862, and until Hugh Brinkley got possession. Ingraham and Lees had been occupying it, but I can't say whether they had closed out their business before the Federals came or not.

Int. Did or not the Federal guards occupy any portion of the Brinkley Block after its seizure, and if so, what part, prior to the release to Hu. L. Brinkley?

Ans. They did not to my knowledge.

75 Int. Did not they occupy one of the offices in said block on Monroe street, 2nd floor, adjoining that occupied by Henderson Owen, for a short time in the summer or fall of 1862?

Ans. They might, but not to my knowledge.

Int. State who occupied the Monroe street tenement after the same was taken away from Gates, Wood and McKnight and prior to July 11th, 1863, and what business did they follow?

Ans. Henderson Owen had one office upstairs, and I can't state who else was there. There was a liquor merchant there, D. C. Evans, but I can't say when he came there. There were some cotton factors

76 who occupied it prior to Evans. They stored cotton in the building.

Int. Do you know where Mr. Ingraham, the business manager of the firm of Ingraham and Lees, now is?

Ans. I do not.

Int. Examine the papers here shown you, and state if you know in whose handwriting the signature to the same is, and make it a part of your deposition.

Ans. I have examined it, and file the same as Exhibit B to this deposition. I have seen R. C. Brinkley write his name and would say that the signature to this receipt is his genuine signature.

Int. State, if you know, whether the other occupants of the

77 Brinkley Block paid rents to the government; if so, how do you know it?

Ans. I do not know it of my own knowledge. I was told so at the time by the parties themselves.

Cross-examined:

Int. Was there not a great many business houses standing vacant at

the time of the Federal occupation, left vacant because of the destruction of business—because of the war—and was it not the custom of the government to enter upon and occupy such property?

Ans. There was a good many, and it was the custom for them to take possession when the owners had left the city and gone South.

78 Int. Do you know that the government only took possession of such property when the owners had gone South, or may they not have taken it in other instances?

Ans. I think they took it when they needed it for their own use.

Int. Don't you know that fact, that the property leased by Gates, Wood and McKnight, mentioned in the pleadings, was in fact standing vacant at the time of the Federal occupation, and that Gates, Wood and McKnight had voluntarily quit the possession of it because of the death of business, or for other reasons?

Ans. I don't remember whether it was occupied at that time or not, except that occupied by H. Owen.

79 Int. Do you mean to state that Henderson Owen was in actual possession of a portion of the property leased by R. C. Brinkley to Gates, Wood and McKnight at the date of the Federal occupation, or was it at a subsequent date?

Ans. I think Mr. Owen occupied during the war.

Int. Was the part which you occupied a portion of the property leased to Gates, Wood and McKnight?

Ans. No, sir.

Int. Had you any business connections with Gates, Wood and McKnight, or had you any connection whatever with their lease from R. C Brinkley?

80 Ans. I had not.

Int. Do you profess to be sufficiently acquainted with the handwriting of R. C. Brinkley to state positively that the signature to Exhibit B is his genuine signature?

Ans. I think I am.

Int. How often have you seen him write?

Ans. I have been renting from him for eleven years, and I have several notes of his signed by himself.

Int. Please produce the receipt given to you by H. L. Brinkley, and mentioned in answer to the 1st question asked you this evening.

81 Ans. If I can find it I will file it as Exhibit C hereto.

Int. Had the giving of this receipt and the conversation in relation to it which had with R. C. Brinkley, already refer'd to, any connection with the lease from R. C. Brinkly to Gates, Wood and McKnight, or to their business concerns with each other?

Ans. It had not.

(Defendant's solicitors waive the production of the receipt refer'ed to in Exhibit C in last two questions and answers.)

Re-examination:

Int. You say they took property in other instances than when
82 it was abandoned when they needed it for their own use; did the government agents take possession of the Brinkley Block for their own use?

Ans. Not to my knowledge.

Int. Did Ingraham occupy the Main street tenement before the Federals came to Memphis, that is, that portion of the property in the pleadings mentioned?

Ans. They did.
Further deponent saith not.

N. J. WIGGIN.

Sub. and sworn to Nov. 2n l, 1869.

E. B. McHENRY,
D. C. and Master.

Rec'd, Memphis, 20th April, 1860, of Gates, Wood and McKnight, one hundred and twenty-seven $\frac{68}{100}$, it being the amount paid by them
83 for the owning in front of storehouse No. 283 Main street, now occupied by them, said amount to be credited on their rent note due the 1st day of October, 1863, it being the last note due on the present lease of said house to them.

R. C. BRINKLEY.

Ex. B.

(Endorsement on depo. of N. J. Wiggin:) Filed Nov. 2, '69. A. Alston, clerk & master.

Deposition of H. Owen.

Chancery court of Memphis.

S. M. GATES ET AL.
vs.
R. C. BRINKLEY.

84 The deposition of Henderson Owen, taken by complainants, to be read in evidence in above cause, notice, and all informalities in the taking waived.

And H. OWEN, being duly sworn, says:

Int. Where did you occupy as a business-house from about June 1st, 1862, until the close of the war, and did you occupy as a tenant or as a' owner; if tenant, under whom?

Ans. I did business in an office in the Brinkley Block, in that portion fronting on Monroe street, upstairs, on the second floor, as a commission merchant. I was a tenant in common with Brown and Owens, and afterwards as Owen and McNutt. We were tenants of Gates,
85 Wood and McKnight—that is, Brown & Owen—until about the 1st of September, 1862, when I commenced paying rents to the United States Gover'ment rental agents, to whom I paid for about twelve months—from six to twelve months. I have been unable to find my receipts and can't show the exact time, nor do I know the exact time I commenced paying to H. L. Brinkley, Owen and McNutt, as a firm, first commenced paying H. L. Brinkley September 1st, 1863; they paid him $20.00 for the month of September, and on the 11th September, 1863; after that time paid to H. L. Brinkley, or his agent; and some time after, R. C. Brinkley returned from the South. Owen and McNutt continued to pay to different agents rents of office until we left the office early in July, 1868.

86 Int. 2. To whose agents did you pay after R. C. Brinkley's return fr m the South?

Ans. To the agents of R. C. Brinkley, to the best of my recollection; certainly not to Wood and Gates.

Int. 3. Did R. C. Brinkley ratify by his conduct or acts these payments to agents, or did he speak to you of any as the proper parties to whom to pay?

Ans. I never had any intercourse with R. C. Brinkley in reference to rents, or heard of any complaints from R. C. Brinkley in reference to the rents paid by us during the time we occupied the office, from September, 1863, until we left the office.

87 Int. 4th. Did R. C. Brinkley ever visit your office during that period?

Ans. Yes; Mr. R. C. Brinkley called in our office frequently, soon after his return from the South.

Int. 5th. How did you happen to quit paying rents to Gates, Wood, and McKnight, and allow to the United States rental agents? State how.

Ans. Soon after the Federal authorities took possession of the city of Memphis, I was notified by some one from the United States Rental Office that (we) I must pay rents to the U. S. Gover'ment.

Int. 6. Did you immediately accede and obey the notice without
88 word, or not; if not, what did you do?

Ans. I at once called at the United States Rental Office and informed the proper officers that we were occupying our office as the tenants of Yates and Wood, and that we had paid our rent up to 1st Sept., 1862.

Int. 7th. Did anything further occur between you and the rental officer? If so, state the further substance of the interview.

Ans. On my stating to the rental officer that we had paid rent to Gates and Wood, who had a lease of the property from Brinkley, that we did not think it right for us to pay rents to the United States Gover'ment, as Gates & Wood were in or near the city, he replied
89 that as we had paid the rents to Wood and Gates to 1st September, that he would not require us to pay rent to the United States until after 1st September; but as the gover'ment had taken possession of the property of R. C. Brinkley, who was down South, that after 1st September he would require (us) I to pay the rent to that office, & we did so for several months, the precise time not now recollected.

Adjourned by consent until 2 o'clock p. m. to-morrow.

And on Thursday, November 4th, 1869, pursuant to an adjournment, the further taking of this deposition was resumed.

Int. 8th. Did any other words pass that you recollect on this matter, either as to Yates and Wood & McKnight, or R. C. Brinkley, between you and the rental agents? If so, please state it.

90 Ans. When I called to see the rental agent after the notifycation to pay rent to the gover'ment, I remarked that I was from Gates, Wood, and McKnight—Gates and Wood who had a lease for the property from Brinkley—and that Mr. Gates was in or near the city, and that it was hard, as I though', to take his property from them; but, as before stated, in a former part of this deposition, the rental agent reported that they took possession of the property as the property of R. C. Brinkley, who was down South, out of their lines, or words to the same purport.

Int. 9. Please state who were the tenants of Gates, Wood and McKnight on the same floor with you about the same time, the taking possession of the same by the U. S. Gover'ment.

91 Ans. I think that Geo. W. Tratten was the only tenant on the floor with myself at that time; the other tenants, I think, had left;

perhaps Martin Gridley may have been in one of the offices part of his time. J. C. Cooper, the occupant of the other office, left for Samerielle just before or about the time of the Federal occupation of Memphis.

Int. 10th. Who occupied as tenants of the government the main tenement below you, fronting on Monroe street and on the corner of that street and the alley between Main street and Front street, and under the offices of yourself and others named, from the time you were notified until, say, July, 1863?

92 Ans. I don't now remember who the occupants were before fall of 1863, when a man by the name Stephens or Stephenson with another man whose name I don't recollect. There were other tenants, perhaps, before Stephens and after, before the close of the war. I only remember that of J. C. Davis & had possession of the room for a while, but whether before Stephens or after I do not now recollect.

Int. 11th. What was Stephens' business, and where is he and the man associated with him?

Ans. Stephens was engaged in trading in cotton, getting permits to be brought in to Memphis, and storing cotton for different persons. I don't know where Stephens is now or the man associated with him is.

93 Int. 12. Do you know who occupied the portion of the Brinkley Block fronting on Main street, leased to Gates, Wood and McKnight by R. C. Brinkley, to wit, the 1st tenement south of the tenements leased to Mansfield & Co., when you were notified to pay rents to the gover'ment?

Ans. As well as I now recollect the firm of Ingraham and Lees occupied the buildings.

Int. 13th. Can you state who succeeded Ingraham and Lees in that tenement?

Ans. I don't recollect, but Mr. Wallace, formerly of Wallace and Vanpeth, occupied the room awhile before the close of the war, if my recollection serves me right.

94 Int. 13th. Who were the only original tenants of Gates, Wood and McKnight, that occupied that portion of the Brinkley Block leased by Brinkley to Gates, Wood and McKnight, or any portion of it continuously under Brinkley under the Federal rental agents, and again under Brinkley, say from June, 1862, to October 1st, 1863? State if you know.

Ans. I know that the upstairs offices in the building fronting on Monroe street was occupied by myself, Owen and McNutt, and Geo. W. Trotter, the entire time from June, 1862, to October 1st, 1863, and can't now remember any others.

Int. 14th. Do you know of any tenants of that portion of the Brinkley Block paying rents to the Federal Gover'ment besides your
95 own house from the time the Brinkley block was seized in 1862, until released to Hugh Brinkley in July, 1863? If so, state.

Ans. I do not know of my own personal knowledge that one did pay rents to the United States Gover'ment, but he and Geo. W. Trotter say that the United States rental agents made the same request on him to pay as he had made on himself.

(Objected to by def'ts' solicitor.)

Int. Was R. C. Brinkley aiding & abetting the Federal Gover'ment in 1862, when he was in the city or its vicinity? State your knowledge.

Ans. I never thought, heard or believed that R. C. Brinkley was rendering aid to the Federal Gover'ment during the time specified, or

96 at any other period during the war. It was always understood by me that R. C. Brinkley was a strong friend to the South at the early commencement of the war, and did all in his power to promote the southern cause, at any rate until the Federal occupation of Memphis.

Int. 16th. Do you know whether or not he was a member of any voluntary organization for that purpose? If so, state.

Ans. I do not recollect that he was.

Int. 17th. Do you recollect where Mr. Gates stored his immediate stock and office furniture when the Federal authorities took possession of the property in question?

Ans. If I ever heard I have forgotten the place.

97 Int. 18th. Do you know of your own knowledge who fitted up various offices and tenements leased by R. C. Brinkley to Gates, Wood and McKnight for tenants, papered, painted, plastered, grates, mantels, hoist-wheels, shelvings, &c.? If so, state.

Ans. When Brown, Owen and Co. rented their office of Gates and Wood, or Gates, Wood and McKnight, they were not fully completed, but Mr. Sam'l Gates said he was to fit them up at the expense of his firm, and that our own office and the offices should be in readiness by 1st September, at which time our rents were to commence. I do not know of my knowledge whether R. C. Brinkley was to refund the outlay of Yates, Wood and McKnight or not.

98 Int. 19th. Is there any fact connected with the seizure of this property which gave any information as to who was occupying the tenement on Monroe street, the one under the office of which yours was one, when you were notified to pay rents to the United States Gover'ment? If so, state what in full.

Ans. Browns and Owen were in the habit of storing most of the meat, corn, wheat, flower, and other articles of produce with Gates and Wood after taking office in that building, and soon after the Federal occupation of Memphis S. M. Gates of that firm notified me that we must remove what we had there on storage in their house, as he or they had to give up the building by order from the United States rental agent,

99 and we did remove all that we had in their house except some inferior dried fruit of little value.

Int. 20. Who had possession of that tenement at that time?

Ans. Gates, Wood and McKnight, or Gates & Wood.

Int. 21st. Did you have anything else in storage then that you recollect at that time?

Ans. Brown and Owen, as commission merchants, had in store with Gates and Wood, or Gates, Wood and McKnight, among other things in store, several boxes of materials for the manufactory of rifle guns.

Int. 22nd. Had these been examined by any parties; if so, by whom & for what purpose, and what result?

100 Ans. Before the Confederates left Memphis some person whose name I do not now remember connected with the ordnance committee, learning that Brown & Owen had gun material in possession, examined them and decided that they could not be made profitable to the Confederate cause, declined to take them.

Int. 23rd. Who were on that ordnance committee of the Confederates?

Ans. It was understood by me that Maj. W. R. Hunt was connected with the ordnance department of the Confederate cause in this city.

Adjourned by consent of until 2 p. m. to-morrow.

101 And on Friday, 2 p. m., Nov. 5, 1869, the further taking of this deposition was resumed in presence of counsel of both parties, and H. Owen says:

Cross-examined:

Int. 1st. Were Gates and Wood and McKnight friendly to the Southern cause; did either of them give its aid and comfort, or in any way actually participate in it, prior to the Federal occupation of Memphis?

Ans. It was always my impression that Gates and Wood were friends to the Southern cause; as to what aid or comfort they may have extended to the Southern cause, I don't know anything about. If as to Mr. McKnight of that *of that* firm, I don't remember what his views were.

102 Int. 2. Is not your statements as to R. C. Brinkley's sympathy, &c., for the South, of the same character as in relation to Gates & Wood, namely, an impression without any positive knowledge upon the subject?

Ans. My impression with regard to the sympathy entertained for the Southern cause by all the above parties I derive from hearing their conversation in relation to the war; I mean Gates, Wood, and Brinkley. I have no personal knowledge that any one of those gentlemen gave material aid to the Southern cause.

Int. 3. When you speak of R. C. Brinkley visiting your office after his return from the South, do you mean that he was there socially or on business matters?

103 Ans. Mr. R. C. Brinkley, to the best of my recollection, never called at my office on business, but dropped in socially, as did many other gentlemen.

Int. 4th. What were S. M. Gates, Albert Wood, and McKnight doing when the Federals took Memphis? Had not Gates, Wood, and McKnight voluntarily abandoned the building leased from Brinkley, except the rooms retained by you, your firm, and Trotter?

Ans. I think that they had possession of the lower room on Monroe street at the time the Federals took possession.

Int. 5th. Do you know when Mr. Brinkley went South?

104 Ans. I do not remember the exact time.

Int. 6th. Was not the fact so that the Federal authorities, upon occupying Memphis, took possession of houses in Memphis, where the owners had gone South, without any further enquiry than that the owners were within the Confederate lines, no matter whether they had gone further south than Memphis upon private business or not, and no matter at what time they may have gone?

Ans. I have very little personal knowledge in regard to what the Federal authorities did in regard to taking possession of the property of persons going South; in some instances they did so on account of the owners going South, as I was informed and believe.

105 Int. 7th. You speak of an interview between you and a man at the military rental agency office; did not the conversation which you mention occur subsequent to the actual seizure of the property by the military people?

Ans. I so understood it.

Int. 8. Who was the man you had the conversation with? Can you state that he had any authority to say what he did? Have you any personal knowledge about this man, his duties, the extent of his authority? Do you know anything further than that some person unknown to you made statements to you, the truth or falsity of which you cannot swear?

106 Ans. The individual with whom I had interviews with regarding rents, I found in the rental office on Main street near Madison street, the place I called on other business. The only reason why I

thought he was authorized to collect rents is that I found him in the rental office attending to business. I did not call in question the authority of the man to whom I paid rents to the United States rental agent, having first been notified to appear at the rental office to pay rents. I have no personal knowledge about the man or the extent of his authority to collect rents from me or any one else, only that I felt bound to do as I was required. I know that I was notified to appear at the rental agency room; what authority the man I paid to collect rents of
107 myself or others, I know not of my own knowledge.

Int. 9. I refer to the statement you say he made to you that the property was seized because Brinkley had gone South. Do you know whether the fellow lied or spoke the truth?

Ans. I always thought that he required the rents by his own authority or that of some one in authority over him. I don't know whether he told the truth or not. I believe he told the truth.

(Defendant, by solicitor, objects to all statements made by this man to the witness in regard to the cause of the seizure, as they were made after the seizure, and for other reasons to be shown in argument.—
108 HEISKELL, SCOTT AND HEISKELL, Solicitors.)

Int. 10. Did he exhibit to you any written authority or orders under which he professed that the property was seized? If so, state the contents of such orders or writings exhibited to you.

Ans. None to the best of my recollection at this time.

Int. 11th. What became of the material for making rifle-guns of which you have spoken?

Ans. I stored them in the 5th story of the Main st. building, occupied by Ingraham and Lees, as the best I could do. After the close of the war, I had what was not stolen stored at the shed of J. C. Hill
109 and Co., on Court street, where they now are.

Int. 11th. Were these materials for making guns in the house when the Federals first occupied Memphis, and were they afterwards removed by order of the Federal authorities; to whom did they belong and when first purchased?

Ans. I think they were on storage with Gates & Wood when the Federals arrived in Memphis; they were removed with other things from Gates & Wood at the request of S. M. Gates, of the firm of Gates & Wood. If the Federal authorities ever knew that we had such materials in our possession I never knew of their having such knowledge. One thing I know, that the Federal authorities never issued any order to
110 me about the removal of the materials the making guns. The guns were consigned to us, Brown & Owen, for sale, by Doct. R. A. Westbrook, then residing, I think, in New Madrid, Mo. He is still the owner. The guns materials were consigned to us last of 1861, or early in 1862, as well as I now recollect.

Int. 13th. What quantity of the material was there, when stored—I mean in what room of the house rented by Gates, Wood, and McKnight from Brinkley?

Ans. I have all stated that there were several boxes of the materials for making guns, and I also remember that there was a turning lathe in the lot; they were stored in the lower room of Gates & Woods' business place on Monroe street, and stored by us, Brown & Owen, as
111 commission merchants; they, Gates & Wood, received them on storage as a business transaction, and we paid them for storing as on other articles stored with them.

Re-examined:

Int. 1st. When did this conversation referred to in X-question at bottom of page 3 of X-examination, to which you answer "I so understood it," occur; how long after the notification by the rental officer, & where?

Ans. I think that the notification which I received from the rental agent was soon after the Federal occupation of Memphis in June, 1862, certainly not later than July or 1st August, 1862. I obeyed the order, to appear at the rental agency promptly after receiving the notice.

112 All the conversation I ever had with the rental agent was in the rental office, as stated heretofore, on Madison street, and the conversation referred to occurred as well as I recollect the first time I visited the rental office. I am satisfied it did, as I went to remonstrate against paying the United States agency, having paid Gates & Wood rent *rent* to 1st Sept., 1862. I do not recollect how long before I was notified that the building I occupied was seized by the gover'ment.

And further saith not.

HENDERSON OWEN.

Oath waived, and may be read as if duly & legally sworn to.

HEISKELL, SCOTT AND HEISKELL,
Sol's for Compl'ts.

113 (Endorsement on deposition of Henderson Owen:) Filed Nov. 5th, 1869. A. Alston, clerk and master.

Deposition of P. M. Patterson.

Chancery court of Memphis.

S. M. GATES ET AL.
vs.
R. C. BRINKLEY ET AL.

Deposition of P. M. PATTERSON, witness for complainants, taken by consent of parties in the presence of counsel for both, waiving notice and all informalities, this Nov. , 1869, before the clerk and master, at his office.

Int. Please state your name, age, occupation, and residence.

114 Ans. Name, Page M. Patterson; aged 41 years; and transfer agent, &c., in the city of Memphis.

Int. 2. Please state where you were engaged in business in 1863 and '64, and how?

Ans. In Memphis, from August 1st, 1863, until May 5th, 1864, under instructions and directions from Hugh L. Brinkley, and both prior and subsequent thereto in Memphis, Tenn.

Int. 3. Please state the kind of business you were engaged in with Hugh Brinkley, when, and what did you do?

Ans. Collected house rents & looked after his property.

Int. 4. Please state the most prominent building for which you

115 collected rents, while associated with Hugh Brinkley, and where it is located?

Ans. The largest part of the property was the Brinkley block, between Madison and Monroe, on the west side of Main street, the back portion of which (one store) fronted Monroe street and the rest fronted on Main st. It includes the entire block, bounded on the south by Monroe, west by Center alley, north by an all'y, and east by Main street.

Int. 5. Please state if you can who occupied that portion of said Brinkley block which fronted on Monroe street, between Central alley and the short alley east thereof and the tenement next to and south of the tenement occupied by S. Mansfield and Co. in August,
116 1863, when you first commenced business with Hugh Brinkley?

Ans. 5th. The up-stairs offices on Monroe street were occupied by G. W. Tratter & Co., W. H. Caward, Owen & McNutt, and I kept my office there, too. A man in the cotton compressing business was in the basement tenement fronting on Monroe street, and I think D. C. Evans went in about the time I quit. Feiknor and Co., I think, occupied the Main street tenement above mentioned a part of the time, and probably all the time.

Int. 6. Please state who had charge of the original lease executed in 1859-'60-'61, by R. C. Brinkley, and the notes for rents due under
117 these leases for the said Brinkley block?

Ins. I did not examine the papers in the safe nor have anything to do with the old endeteles. If there were anything pertaining to such matters, I did not know of same, as I merely collected rent of the parties who were in possession.

Int. 7. Please state what you did with the money collected and the receipts for disbursements made.

Ans. The money was placed in bank to the credit of Hugh L. Brinkley, and for what disbursements made by me receipts were turned over to Mr. W. B. Waldran, to whom I turned over the safe key.

Int. 8th. Who employed W. B. Walden to attend to this business, collecting rents for the Brinkley block?

118 Ans. Hugh L. Brinkley, R. C. Brinkley, or both.

Int. 9. Please state whether or not R. C. Brinkley expased any dissatisfaction with your arrangement of the business while you had charge of same under Hugh L. Brinkley, as to the Brinkley block.

Ans. No, sir; he did not; the charge was made that Mr. Waldron had more experience in such matters.

Int. 10. Did you see R. C. Brinkley in 1864; if so, when, and how often?

Ans. I don't remember, but if he returned in 1864, I saw him about as often as any else did.

Int. 11th. Did you see him frequently immediately after his return to Memphis?

119 Ans. I saw him frequently.

Int. 12. Did you ever meet him in the up-stairs office on Monroe street, or in any office which he occupied or where he had the rents collected in the city of Memphis, soon after his return?

Ans. I did.

Int. 13. Did you converse frequently with him in his office soon after his return?

Ans. Had several conversations with him.

Adjourned until 9½ o'clock a. m., Nov. 25th, 1869.

R. J. BLACK,
Dep't. C'k and M.

And at 9½, November 25th, 1869, the further taking of this dep-
120 osition was *was* resumed.

Int. 14. State when Hugh Brinkley got possession of the Brinkley block, of which the property mentioned in the pleadings are a part, from the United States authorities.

Ans. I do not know exactly; it must have been before August 1st, 1863, as he had possession of it then.

Int. 15. Do you know whether or not the gover'ment authorities had posssession of the building and collected the rents from tenants; if so, how do you know?

Ans. I do not know it, only from hearsay; the first I knew of the property it was turned over to me.

121 Int. 16. State who you heard say the gover'ment was collecting rents, and what was said as to the possession of the same.

Ans. Can't remember who I heard say it.

Int. 16th. Did you or not hear Hugh Brinkley say anything about the gover'ment having it and delivering possession to any one? If so, who did he say the gover'ment delivered it to?

Ans. My impression was that Hugh Brinkley got possession from the gover'ment officials. It was Hugh Brinkley that put me in possession as agent.

Int. 17th. Did you or Hugh Brinkley have possession any of the old notes or leases for the property executed by the parties and

122 R. C. Brinkley either among your papers or in the safe?

Ans. There were other papers in Hugh Brinkley's possession in the tin box, but I can't recollect their contents.

Int. 18th. Did you or Hugh Brinkley settle with Franciso & Wiggin for their unexpired lease from R. C. Brinkley, and with S. Mansfield for the unpaid lease?

Ans. I do not remember.

Int. 19. Did either of you collect rents from either of them while you were in charge under Hugh Brinkley?

Ans. I can't recollect whether I did or not.

Int. 20. Did either of you?

123 Ans. Not that I know of. I can't recollect.

Int. 21. Did Hugh Brinkley say how he got possession of the property from the authorities?

Ans. I don't remember hearing him say.

Int. 22nd. Was R. C. Brinkley a loyal citizen of the United States in 1862, prior to the occupation of the city of Memphis by the Federals? If so or not, how do you know?

Ans. I don't know how to answer that question. He went away from here with the Southern people.

23 Int. Did he contribute to either of the contending powers, the United States or the Confederate States, either in money, means,

124 or influence, prior the occupation of the city by the Federals? If so, to which one?

Ans. His influence, I thought, was with the Southern people. The other questions in the sentence I do not know.

Int. 24. Do you not know that he was a member of the ordinance committee, or the voluntary organization of which it was a part, of which committee Wm. R. Hunt and other well-known citizens were members, and engaged in the procurement of arms, ammunitions, munitions of war with and for the enemies of the United States Gover'ment?

Ans. I only know it from rumor or the newspapers.

(Defendants' solicitors excepts to all statements as to rumor, or

125 contents, or newspaper, and to all impressions and hearsay.)

Cross-examination:

Int. Was not R. C. Brinkley a man of large means and of extensive business correspondence at the breaking out of the war and the fall of Memphis? And are you prepared to state positively that he did not go

South before the Federal occupation of Memphis upon private business?

Ans. 1. He was. He went South before the occupation of Memphis by the Federals, and had large interests at stake by the effects of the war. I don't know as I can state positively f. I don't know.

Int. 2. Don't you know the fact that Mr. R. C. Brinkley did not
126 engage actively in the Confederate cause while he was South, and that he had no connection with it, but went as a citizen upon his private business?

Ans. He was only South as a private citizen, with many others of like fortune. I never heard of him only as a private citizen while South. I hav'n't positive knowledge as to his connection with the Confederate army.

Int. 3. Have you any positive knowledge as to his arrangements which R. C. Brinkley and his son Hugh L. Brinkley made between themselves as to R. C. Brinkley's business while he was South?

Ans. Only that R. C. Brinkley's business was left in the hands
127 of Hugh L. Brinkley, as far as my knowledge goes.

Int. 4. Now answer, have you any personal knowledge as to the particular arrangements between Hugh L. Brinkley and R. C. Brinkley, while he was South?

Ans. I have not.

Re-examined:

Int. 1. Where did R. C. Brinkley's largest interest lie after the occupation of the city of Memphis by the Federals, and until his return in 1864, as ascertained from your acts as agent, and your conversations with Brinkley or his son—within the limits of Federal occupation, or without the limits of the Confederate occupation?

128 Ans. I couldn't say where it was.

Int. 2. Did you know of any outside of the city of Memphis your self during that period?

Ans. 2. Yes, sir; he had property in the city of Nashville and suburbs; in Dyer County, Weakley County, and in the State of Arkansas.

Int. 3. Are you not satisfied that R. C. Brinkley was at none of those places during that period, from what he himself has told you, and your own personal knowledge?

Ans. No, sir; I have no idea where he was when he was down South; don't suppose he visited Arkansas. I never saw him, and couldn't state.

129 Int. 4. Did R. C. Brinkley have any other recognized agent in the city of Memphis after Federal occupation, and until you took charge under Hugh L. Brinkley?

Ans. Not that I know of.

And further deponent sayeth not.

P. M. PATTERSON.

Sworn to and sub before me Nov. 25th, '69.

R. J. BLACK,
D. Clk and M.

(Endorsement on deposition:) Filed November 25th, 1869. A. Alston, cl'k & master.

Deposition of W. B. Waldron.

Chancery court of Memphis.

S. M. GATES ET AL.
vs.
R. C. BRINKLEY.

130 Deposition of W. B. WALDRON, taken by consent, in presence of counsel for both parties, notice and all informalities waived, on Saturday, November 27th, 1869, to be read in behalf of complainant.

And said witness, being duly sworn, says:

Int. 1st. Please state your age and residence.

Ans. Age, fifty-five years, and reside in Shelby County, Tenn.

Int. 2. Please state what business you were engaged in during the latter part of 1864, and the former part of 1865.

Ans. I was principally engaged in renting and collecting rents for R. C. Brinkley.

131 Int. 3. State one or two of the most prominent buildings or blocks of buildings that you had in charge as such agent.

Ans. The block at present occupied by the Peabody Hotel; the block on the northeast corner of Madison and Main; a part of the Desota block, and others.

Int. 4. Please state the boundaries of the Peabody Hotel block, which you had in charge, and how was generally designated before it became a hotel.

Ans. The boundaries 148 feet six inches on the west side of Main street by 148 feet 6 inches on the north side of Monroe street, being the entire block between those two streets and the two alleys, and was known as the Brinkley block.

132 Int. 5. State, if you know, who were the lessors of the property in the pleadings mentioned, to wit, the tenement next south of and adjoining S. Mansfield's, at the time and extending through to the alley, and also the tenement fronting on Monroe street in the southwest corner of this block, in 1862, prior to the occupation of the city by the Federals.

Ans. Yates, Wood and McKnight.

Int. 6. Please state from whom you got possession of the *of the* office as agent; i. e., whom did you succeed in charge of the rents and renting?

Ans. P. M. Patterson.

133 Int. 7. State what you came into possession of as the agent of R. C. Brinkley.

Ans. An iron safe, leases of various parties, and notes, and with other papers.

Int. 8. What did you find among the papers? Please state what you mean by other papers.

Ans. Receipts for money paid by P. M. Patterson.

Int. 9. Did you find any other notes among them? If so, please state the names of the makers, if you recollect of any of them.

Ans. I have stated I found notes. I cannot recollect who were the makers of many of them. I recollect the*ir* were some made by

134 S. Mansfield & Co., Gates, Wood and McKnight, and many others.

Int. 10. When did you find the notes of Gates, Wood and Mc-

Knight, and what did you do with them, and state what you understood they were for, and how you regarded them? State the facts.

Ans. I found them in the tin box delivered to me by P. M. Patterson. I found them in a bills receivable and payable book with all the other notes that came into my possession pertaining to said business. I understood they were given for rent of a portion of the Brinkley block. I regarded them as subjects to adjustment by R. C. Brinkley and Gates, Wood and McKnight, as Mr. Brinkley did not direct me to present them.

135 Int. 11th. How did you keep the rents collected by yourself as agent, and with whom did you settle for the rents collected of tenants in the Brinkley block?

Ans. I paid out the money as directed by R. C. Brinkley.

Int. 12. Did or not Gates, Wood and McKnight hold possession of the tenements leased them by R. C. Brinkley continuously till the expiration of their lease?

Ans. They did not, though I cannot state how much of the time was unexpired.

Int. 13th. Examine the lease or duplicate Exhibit A to original bill in this cause, and state, if you know, in whose handwriting the signature thereto is, and also that of the endorsement on the back of

136 the same date July 5th, 1859, and if you recognise this as a copy of any instrument that came into you' hands as agent of R. C. Brinkley.

Ans. I have examined the duplicate and the endorsement thereon, and recognize the signature of R. C. Brinkley, but do not know who signed the same of Gates, Wood and McKnight. This duplicate or such a paper was among the papers in my possession when I had charge of Mr. Brinkley' business.

Int. 14. Did the notes of Gates, Wood and McKnight have any reference to this lease? State your understanding.

Ans. It was my understanding that the notes were given for rent of the premises specified in this lease.

137 Int. 15. Who had possession of the premises refer'ed to in said lease during any part of the time thereof, while Gates, Wood and McKnight were out of possession?

Ans. The Federal authorities.

Int. 16. Did you ever hear R. C. Brinkley say, during your agency, how he got possession of the premises in said lease from the Federal authorities, or did he make any reference to that matter? If so, state what.

Ans. I do not recollect having any conversation with Mr. Brinkley on this subject.

Int. 17. Did he refer in your presence to a bond or release or anything of that kind executed or given to any one from him in the

138 getting possession of that property? If so, state whom and the fact stated.

Ans. I do not recollect of having any conversation with him on this subject.

Int. 18th. Were you present at any interview between S. M. Gates and R. C. Brinkley at any time since the close of the war? If so, state when it was and what you understood to be the subject-matter of the interview, and state, as near as you can, the time of this interview.

Ans. I heard Mr. Brinkley and S. M. Gates talking in my office in the Brinkley Block on the subject of these notes and this lease, but what

either of them said I do not recollect it; it was in the year 1866 or '67, before I moved my office down to 450 Main street.

139 Int. 19. Where was R. C. Brinkly's office and your office respectively situated at the time of this interview?

Ans. We occupied the same office, though I was attending to the business of the Memphis and Little Rock R'road Company. The office was the same formerly occupied by Gates, Wood and McKnight, upstairs in Brinkley Block.

Int. 20th. Have you any further fact which has any connection with these matters in controversy? State your recollection.

Ans. I do not recollect at present anything touching this matter that has not been given.

Int. 21st. Did you keep books as agent; if so, how did you

140 class the notes of Gates, Wood & McKnight, refer'ed to above?

Ans. I did not keep a regular set of books. The only record I had of any notes was the bill book, and these notes were entered thereon alphabetically. The object of this bill book was to get a record of all notes.

Int. 22. Was not Mr. Gates or some one of the members of that firm in or near the city during the whole period of your agency?

Ans. My recollection is they were.

Int. 23. Who directed and controlled your actions as agent during the whole period of your agency, as principal?

Ans. R. C. Brinkley.

141 Int'y 24th. Did you not daily collect rents and discharge the duties of that agency, and collect notes as the duties of your agency required?

Ans. I gave close attention to collecting and discharging the duties which I had undertaken.

Int. 25. Why did you present these notes or try to collect them?

Ans. I was not directed by Mr. Brinkley to do so.

Cross-examined:

Int. 1st. Have you any recollection of any specific statement made to try Mr. R. C. Brinkley in relation to these notes?

Ans. I have not.

142 And further deponent saith not.

W. B. WALDRON.

Oath waived, and may be read as if duly sworn to.

HEISKELL, SCOTT & HEISKELL,
Sol's.

(Endorsement on deposition:) Filed Nov. 27, 1869. A. Alston, C. and M.

Entries on rules, November 25, 1869.—S'p'a to testify. (Wit.)

Entry on rules, Nov. 27, 1869.—Nov. 27th, 1869, s'p'a to testify executed on W. B. Waldron.

A. P. CURRY, *Sh'iff.*
By A. W. TAYLOR, *D. S.*

Subpœna to testify.

143 The State of Tennessee to the sheriff of Shelby County:

Summon W. B. Waldron, if to be found in your county, to ap-

pear before the clerk and master of the chancery court of Memphis, at the court-house in the city of Memphis, *on* instant*u*, then and there to testify in a cause of S. M. Gates et al., complainants, vs. R. C. Brinkley, defendants, on behalf of complainants.

Herein fail not, and have you then and there this writ.

Witness Augustin Alston, clerk and master of the chancery court, at the office in the city of Memphis, this 25th day of November, '69, and 94th year of American Independence.

A. ALSTON, *Clerk & Master*,
By E. B. McHENRY, *D. C. and M.*

(Endorsement:)
Issued 25th day of Nov., 1869.

A. ALSTON,
Clerk and Master.

144 Came to hand 26th day of November, 1869. Executed November 27th, by reading the within to W. B. Waldron.

A. P. CURRY, *Sher'ff.*
A. W. TAYLOR, *D. Sher'ff.*

Entry on rules September 22*s*d, 1870.—Sep. 22, 1870, s'p'a to t*e*stify. Just. Sept. 24, 1870. 1 wit.

Subpœna to testify.

The State of Tennessee to the sheriff of Shelby County:

Summon Charles Janes, if to be found in your county, to appear before the clerk & master of the second chancery court of Shelby County, at the court-house in the city of Memphis, on Saturday, September 24th, 1870, at 10 o'clock a. m., at the office clerk and master 2nd chancery court of Shelby County, then and there to testify in a cause of
145 S. M. Gates et al., comp'ts, vs. R. C. Brinkley, defendants, on behalf of comp'ts.

Herein fail not, and have you then and there this writ.

Witness M. D. L. Stewart, clerk and master of the second chancery court, at office in the city of Memphis, this day of May, 1870, and 94 year of American Independence.

M. D. L. STEWART,
C. & M.,
By B. R. HENDRSON,
D. C. & M.

(Endorsement on subpœna:) Issued 22*s*d day of September, 1870.

M. D. L. STEWART,
Clerk and Master.

Came to hand 22 day of September, 1870, and executed on Charles Jones, by making known to him the contents of this writ, Sept. 23, 1870.

MARCUS J. WRIGHT,
Sheriff,
By D. T. NOSE, *D. Sheriff.*

146 Entry on rules Sept. 23, 1870.—Sept. 23, 1870. Subp'a' to testify executed on Chas. Jones.

MARCUS J. WRIGHT,
Sheriff,
By D. T. NOVE, *D. S.*

Deposition of Chas. J. Phillips.

Second chancery court of Shelby Co.

S. M. GATES ET AL.
vs.
R. C. BRINKLEY.

Deposition of CHAS. J. PHILLIPS, witness for complainant, known to me to be of lawful age, taken by consent of parties at my office, all formalities being waived.

1st. Please state your residence since 1858.

Ans. Memphis, Tenn.

147 2. In what business were you engaged in 1859, '60, '61, and '62?

Ans. Clerking for complainants.

3. Did you know the property described in the pleadings and mentioned in the lease filed with complainants' bill as Exhibit A?

Ans. I did.

4. Do you know the signature' to said lease?

Ans. I do, very well. They are the genuine signatures of complainants by Mr. Wood, and of def't by himself.

5th. In what condition was that property when complainants first entered upon it?

148 Ans. The Main-street property was finished first, and the Monroe-street property afterwards. After complainant went into the Main-street portion they put in counters, fixtures, pump, pipes, &c. I don't know what other improvements were done by complainants to this portion. On the Monroe-street property they received the bare brick walls, as constructed by Charles Jones. They afterwards constructed five suits of offices in the second story and five other suits of offices in the third story, and finished all the doors and stairways (except the main stairway from the entrance) up to and including third story, also the mantels, grates, and everything necessary to make the offices or rooms comfortable. They put up their office fixtures; they furnished the hoist-wheel and apparatus; they put in some extra pillars or

149 studding to support the ground-floor, on account of its insecurity.

6. Please state how long you have been engaged in business in Memphis and familiar with the leasing of buildings by merchants.

Ans. I have been in business in Memphis—actively engaged—going on 21 years, and familiar with leasing of property or business houses.

7. Is it usual or not in Memphis for lessees to put the improvements on leased property, such as was done by complainants in this instance?

Ans. It is not usual to put as much improvements on leased

150 property, unless it is expressly specified in the lease.

8th. What was the object in view in doing so in this instance? (Objected to by def't.)

Ans. That they were actuated in so doing in view of to be derived from such portions as they anticipated rerenting?

9. What was a fair and reasonable rental of such property at and during the time mentioned in the lease, as business-men would agree upon at that time and date of the lease, with the property furnished and ready for occupation, as prepared by complainants?

Ans. I consider the price named in the lease as being a fair and reasonable rent, and did so regard it at the time.

151 10. Look at the bill of particulars enumerated in Exhibit B, summing up $2,763.48, and say whether or not the work therein mentioned was done in that leased property. If so, by whom, and by whom paid for?

Ans. I recognize the bill as being a copy from the books which I kept at the time. The work was done by the parties named in the bill at the instance of and was paid for by comp'ts.

11th. Please examine account marked, "Exhibit O" to S. M. Gates' dep., and see what the same is for and state whether or not it was for work done on that leasehold property, and by whom done and who paid for same?

152 Ans. John York did the work specified in said exhibit, amounting to $253\frac{33}{100}$, and did the same for complainants and was paid for the same by complainants; the said amounts passed through my hands as clerk or bookkeeper for the house.

12th. How was Mr. Schoonover paid for his part of account marked "Exhibit B" to original bill?

Ans. He was paid part in money and part in materials, lime, &c. His hole account was paid and his estate is still indebted to complainants for balance unpaid.

13th. Were the improvements put upon this leasehold by complainants of good and workman character or not?

153 Ans. They were.

14th. Did said improvements add any permanent value to the property or not; if they did, to what amount?

Ans. They added a permanent value to the property; they were permanent works and increased the value of the building between three and four thousand dollars.

15. Were the improvements of such a character as would be good at this late period of time if not altered or removed by defendants or his tenants since?

Ans. Yes, sir; would last fifty years, or as long as the building stood.

154 16th. What was the characters of the fixtures, such as *maniels*, doors, grates, counters, shelving, hoist-wheels, pump, pipes, &c.?

Ans. Of the best material usually used at the time and with the money expended thereon.

17th. Did complainants have any tenants in 1862, or about that time of Federal occupation, to whom they had sublet this property?

Ans. They did; all the rooms and offices, except those occupied by them, were occupied by tenants. Their tenants at the time of Federal occupation were Ingraham and Lees in the Main-street property; Brown & Owen, McNutt, Tratter and Bailey, J. C. Cooper, Gridley and Porter occupied the rooms in the Monroe-st. property.

155 18th. What rents were complainants collecting from said subtenants at that time?

Ans. About $4,225, from all of them, p'r annum.

19th. Did defendant keep complainants in the quiet and peaceable possession of the property during the *intire* time or term of the lease. (Defendant excepts, because the answer involves or calls for a question of law.)

Ans. From the 6th of June till the 1st of October, 1862, I was not in the city much, and cannot state what was done during that time; up to the 6th day of June, 1862, complainants were in possession of the property. After the 1st day of October, 1862, the time I do not rec-

156 ollect, I found the Federals in possession of the property.

20th. After the Federals took possession of the property did they allow complainants to remove their private property stored there, or did they seize that and keep it with the leasehold?

Ans. They allowed complainants to remove their private property, such as safe, books, wellow ware, &c., &c.

21st. Under whose supervision, plan, and direction was this property constructed and divided up into bed-rooms, offices, &c.?

Ans. Morgan and Baldwin were the architects, and they acted under the directions and instructions of complainants.

157 Cross-examined:

Int. 1. In June, 1862, or about that time, was there not in the building or in some portion of the leased property munitions of war, guns, powder, or things of that sort?

Ans. Not one, sir.

2. Did not complainants have some guns stored away in some portion of the building?

Ans. No, sir; not to my knowledge.

3. What room or rooms did complainants occupy in the property for their own business? What do you think was their fair rental value
158 in 1860, 1861, and 1862?

Ans. They occupied the lower story of the Monroe-street house; the back room of the second and third story (one was the book-keeper's office and one the cotton office), & they occupied the entire cellar of both houses (the Main and Monroe street buildings); the b*luk*-head was taken out so as to make the cellar one room. From two thousand *and* to twenty-five hundred dollars per annum would be the fair rental value of these rooms, in my judgment; that is what they, the complainants, considered they were paying for their portion of the rent after renting out the others. This sum is my judgment as to what was the fair
159 rental value of those rooms during those years.

4th. Did they take lease from the subtenants or rent to them by the year?

Ans. They rented to them by the quarter.

5th. If the part reserved by complainants was worth from $2,000 to 2,500, and amount from subtenants was $4,225, thus making from $6,225 to $6,725 per annum, would not the entire leasehold property, furn'shed in the style it was furnished, have been worth from $6,225 to $6,725 per annum?

Ans. Yes, sir; of course they would be worth that much; but they were not worth that much as fu'nished by Mr. Brinkley.

160 6th. Was not this property in the very heart of the city and of the most desirable character—large handsome buildings, fronting on two of the best business streets in the city, with large number of rums suitable for stores, offices, &c; and was not Memphis in 1859 growing with great rapidity, and property rapidly increasing in value, both sale and rental?

Ans. Yes sir; fronting on one of the best business streets in the city; Monroe street is not a very good business street. With no number of rooms, Mr. Scott, but those on Monroe street, building suitable for offices; yes, sir; both were increasing.

161 Ques. 7. When you say, "Yes, sir; both were increasing," what do you refer to?

Ans. I mean the price of the property, the increase of the value of the property and the rent.

8th. With such property as this at this locality and at this date in

1859, was not a lease of so much for five years an unusual lease in point of time?

Ans. I do not think it was, sir.

9th. You mean to say, then, that if this property had been finished up at the date of the lease in the style it was finished up in 1862, the fair rental value of the whole would not have been more than
162 from $6,225 to $6,725 per annum. Is this your judgment? Would it not have been worth from seven to eight thousand per annum?

Ans. I don't think would be worth from seven to eight thousand dollars per annum. I think was well rented.

10. From what source did you obtain the knowledge that the Federals allowed complainants to remove their private property?

Ans. I bought of Mr. Gates some willow ware and safe, and went and got them out of the house.

Re-examined:

Int. 1st. Then, when you say that $5,000^{00} per annum for the
163 term of five years from one tenant, to wit, Gates, Wood and McKnight, to the landlord, Mr. R. C. Brinkley, was reasonable when finished, as Yates, Wood and McKnight did it, and also when you say that the excess of this sum, the $6,225 to $6,725, the estimated nominal value of the rents due from the many tenants added to the estimated value of the portion occupied by Yates, Wood & McKnight, was a fair and reasonable rental per annum, do you mean that $6,225.00 to $6,725^{00} was a reasonable sum to be paid R. C. Brinkley, who had none of the responsibility of subrenting from many tenants, who were constantly changing, or do you mean that $5,000 per annum for five years term from one tenant, Gates, Wood and McKnight, was fair and reasonable for R. C. Brinkley, and $6,225 to $6,725^{00} fair and
164 reasonable to Gates, Wood and McKnight; if neither, what do you mean?

Ans. I mean that $5,000^{00} to R. C. Brinkley from Gates, Wood and McKnight for a term of years was fair and reasonable, and that Mr. Brinkley was getting a good rent, and that the $6,225 was a fair and reasonable rent to Gates, Wood and McKnight for their trouble in fixing additional rooms to the house.

Int. 2. Then, do you mean they are to get nothing for their extra trouble in subrenting to many tenants, who are constantly changing, and collecting from them, many of whom may leave or fail to pay, or the like? Ought not they to have that in excess, and compensation also for the extra improvements and fixtures, adding to the building over and above the ordinary usage?

165 Ans. I do not mean they should not be paid for their trouble and expenses in putting these improvements in the house, or that they should not get any excess of rent for taking additional risk in subletting.

Int. 3. Then, do you or not mean that 5,000^{00} per annum was reasonable to R. C. Brinkley for the term, and that the $6,225 to $6,725 was reasonable to Gates, Wood and McKnight, who sublet; and also that in addition to all this Gates, Wood and McKnight should be paid for the permanent improvements & fixtures?

Ans. I do mean that $5,000^{00} is reasonable as to R. C. Brinkley, and that Yates, Wood and McKnight should be paid for the improvements independent of any excess in rent they may have received.

166 And further saith not.

CHAS. J. PHILLIPS.

Sworn to and sub. before me Sept. 24th, '70.

M. D. L. STEWART,
Clerk and Master.

(Endorsement on deposition of Chas. J. Phillips:) Filed Sept. 24, 1870. M. D. L. Stewart, C. and M.

Entry on rules Oct. 6, 1876.—Oct. 6, 1870, s'p'a instanter for Chas. Jones issued to testify before cl'k.

Subpœna to testify.

The State of Tennessee to the sheriff of Shelby County:

Summon Charles Jones, if to be found in your county, to ap-
167 pear before the clerk and master of the second chanc'ry court of Shelby County, at the court-house in the city of Memphis, instanter, this October 6th, 1870, then and there to testify in a cause of S. M. Gates and others, complainants, vs. R. C. Brinkley, defendants, on behalf of complainants. Herein fail not, and have you then and there this writ.

Witness M. D. L. Stewart, clerk and master of the second chance'y court, at office, in the city of Memphis, this 6th day of October, 1870, and year of American Independence.

M. D. L. STEWART,
Clerk and Master.

(Endorsement on subpœna:)
Issued Oct. 6th, 1870.

M. D. L. STEWART,
Clerk and Master.

Came to hand 6th day of October, 1870, and executed the same
168 day on Chas. Janes, by making known to him the contents of this writ.

MARCUS J. WRIGHT, *Sheriff.*
By D. T. HOAR, *D. S.*

Entry on rules Oct. 6th, 1870.—Oct. 6, 1870, s'p'a to testify executed on Chas. Janes.

D. T. NOOL, *D. She'iff.*

Deposition of Chas. Janes.

S. M. GATES ET AL. } 2928.
vs.
R. C. BRINKLEY. }

Deposition of CHAS. JANES, a witness for complainant, taken at my office this Oct. 6, 1870, in presence of counsel. All formalities, notice, &c., waived.

169 Int. 1st. Are you acquainted with the parties to this suit, Gates, Wood and McKnight and R. C. Brinkley?

Ans. I am.

2. Did you have anything to do in the construction of the Brinkley Block; if so, what part of the work did you do, or have done in those portions of said block mentioned in the pleadings?

Ans. I think I completed the front or Main street houses, except the shelving. I don't think I did any on the Monroe street houses, except the brick work and the stone work, and dug the cellar.

3. Whom did Gates, Wood & McKnight get to do the plastering?

170 Ans. 3rd. I real'y cannot tell who did it; I can't recollect whose contract it was.

4th. Did you have anything to do with the employment of Mr. Schoonover or Mr. S. C. Mount for the complainants or defendants, or anybody else, or with their payment?

Ans. I think not; I don't recollect having anything to do with them with regard to that building—I mean the Monroe street tenement. They both worked for me on the Main street portion of the Brinkley block.

5. Did you have the partition for bed-rooms, the plastering for same, the pump and fixtures, and gas-fixtures done in the Main street tenement?

171 Ans. 5. Yes, sir; I had no gas fixtures, but put in the gas-pipes.

6th. You mean you put up the partition on the second floor for bed-room, and the plastering of the partition so put up—not the partition which separates the tenements, but the partition in the Main street tenement?

Ans. 6th. I could not swear positively about that, it has been so long 'go.

7th. Did you have anything to do with the counters and shelving in the Main street tenement?

Ans. I don't recollect of having anything to do with them.

Int. 8. Which tenement was finished first, the Main street tene-

172 ment or Monroe street tenement, mentioned in the pleadings?

Ans. The Main street house was finished first.

9th. Did complainants go into possession of the Main street tenement before or after they went into the Monroe st'eet tenement?

Ans. I can't recollect.

10th. What was the difference in the time of the completion, so far as you had to do with it?

Ans. I think the Main street house was finished one year, and the Monroe street house the year after—they were not finished the same year.

173 Int. 11th. Who finished the grates and grate-fronts for the Monroe street property fire-places?

Ans. I can't tell. I don't know whether I did or not.

12th. Were the Monroe street portion in the second and third stories constructed together with their fire-places, chimneys, & windows with a view to making same suitable for offices?

Ans. 12. Yes, sir.

13th. Who ordered said construction?

Ans. I don't know who ordered the work done. J. L. Morgan was the architect, now deceased.

174 14th. Who had the pump put up in the Main street tenement? Do you mean to answer "Yes, sir" in your answer to interrogatory No. 5?

Ans. I did that in the cellar, not that on the ground floor or upper floors.

Cross-examined:

Int. 1st. Is it not the fact that after so long a time your recollection

about all these things is exceedingly obscure and uncertain? Was not your contract, whatever it was, with Brinkley in writing?

Ans. It is right at the moment, but if I had some time to think about it it would not be. My contract with Brinkley was in writing.

175 Int. 2sd. Did you not have a great deal to do with building before the war, in Memphis? and if you know what per cent. was customary for landlords to pay agents to take charge of the renting or leasing of buildings and attend to the collection of rents, please state it.

Ans. I did have a great deal to do with building before the war in Memphis. I was not familiar with the per cent. customary to be paid by landlords to agents for doing said work.

Re-examined by counsel:

Int. 1st. You speak in a general way in answer to cross-interrogations 1st about all these things being obscure and uncertain. Do you
176 refer to all those things which you have answered definitely, or to such as you have expressed some doubts about in your answer?

Ans. There are some of the things stated in my answer I am positive about, but as to many of the details I am not positive about. I know that I was to finish the Main street building according to contract. The Monroe street building just as I have stated in my examination-in-chief. My doubts are about those things in the examination-in-chief about which I expressed doubts in my answers. Mr. Brinkley had the contract referred to which was in writing, & I suppose he has it now.

177 (Complainants require defendants to produce contract referred to in presence of counsel for defendant.—M. D. L. STEWART, C. and M.)

Recross-examination by deft's counsel:

Int. 1st. Is it not so, that the details of the work in these buildings you cannot recollect?

Ans. 1st. Yes, sir.

And further saith not.

CHAS. JANES.

Sworn to and subscribed before me Oct. 6th, 1870.

M. D. L. STEWART,
Clk and M.

(Endorsement on deposition of Chas. Janes:) Filed Oct. 6th, 1870. M. D. L. Stewart, cl'k & M.

178 *Deposition of S. M. Gates.*

Second chancery court of Shelby County.

S. M. GATES ET AL. }
vs.
R. C. BRINKLEY. }

Deposition of S. M. GATES, take' by consent. Notice, caption, and formalities waived in presence of counsel for both parties.

(Exception to matters of competency and relevency reserved.—HEISKELL, SCOTT & HEISKELL.)

Int. 1st. State your name and how you are related to parties in this suit.

Ans. S. M. Gates; am one of the complainants; not related to any of the parties except as a partner of Gates, Wood and McKnight.

Int. 2. Please state whether or not you are familiar with the
179 property mentioned in the lease to R. C. Brinkley to comp'ts?

Ans. I am.

Int. 3. Where did you reside during the late war, from 1861 to 1865?

Ans. Immediately adjoining the city of Memphis, where I have resided the last 20 odd years.

Int. 4th. What was the date of Federal occupation of the city of Memphis?

Ans. 6th of June, 1862, I believe.

Int. 5th. Were you in possession of the property mentioned in the lease at that time? If so, how?

Ans. My firm was. The entire Maine street portion and four
180 Monroe street offices, by tenants; one office, the Monroe street store-room and cellars, by ourselves.

Int. 6. Where was R. C. Brinkley at that time?

Ans. 6th. I only know from hearsay.

Int. 7. Was he in Memphis?

Ans. The common report was that he and other prominent citizens had left here.

Int. 8th. Had R. C. Brinkley taken any part in the struggle between the Federals and Confederates? If so, with whom and how?

Ans. I only know of my own knowledge that R. C. Brinkley was a member of the military committee here acting with the Confed-
181 erate authorities. As a member of that military committee he ordered the seizure of the powder-magazine by the ordinance officer, Mr. Hunt, then in the control of Gates and Wood, the committee, however, agreeing to pay Gates and Wood for the powder; when my personal expression of doubts of getting the pay in time to report in accordance with the committe' president's proclamation of forty days, Mr. Brinkley remarked to me that he would hold himself personally responsible that I could get the money. On one or two other applications by myself before the committe' Mr. R. C. Brinkley was present and acting as a member of that committee.

Int. 9. To whom, and when did you wish to remit the money for the powder?

182 Ans. To Mr. Douglass, the secretary of the Hazard Powder Company, at New York, to whom the powder belonged.

Int. 10. Did you or not continue in possession of the tenements so leased from R. C. Brinkley during the lease?

Ans. I did not.

Int. 11th. Did you abandon it? If not, how did you lose possession?

Ans. I did not abandon it. It was taken from me by the military force as the Federal authority in occupation of the city.

Int. 12. What officer took charge of it under the United States authority?

183 Ans. His name was Vaughan. He was the rental officer under the quartermaster's office, I understood.

Int. 13th. Did you object to the delivery of possession to the Federal authority?

Ans. I did on various occasions.

Int. 14th. What reason was given, if any, for seizing and holding it?

Ans. The reason given me was that Mr. Brinkley had abandoned it, was disloyal, and had gone South.

(Defendant's solicitors objects to the answer as incompetent testimony.—W. L. SCOTT, sol. for defendant.)

184 Int. 15th. Who gave the reason to you?

Ans. This same man Vaughan, the rental agent of the Federal authority.

Int. 16th. Do you know whether or not they would under any circumstances permit you to control it and collect the rents without authority to the Federal or rental agent? If so, what?

Ans. They would allow me to control it, but to pay the rents to them, that is, to the rental agent of the Federal authorities.

Int. 17th. Did they or not refuse to prevent you to control it without paying rents to the rental agent?

185 Ans. 17th. They did.

Int. 18. When you say they took it by military force, what do you mean?

Ans. The corporal guards came with guns and bayonets and took posses'ion. I refused to deliver pos'es'ion, and kept a man in pos'session of the portion in immediate use of Gates, Wood, and McKnight, and refused to deliver up, and they so took it. They got pos'session of that occupied by my tenants nearly six weeks before my notifying my tenants. I use the words my for our, that is, Gates & Woods.

Int. 19. Did you, or *knot*, i. e., Gates, Wood, and McKnight, do any work on the leased property? If so, what?

Ans. The Monroe-street property we finished up except the
186 floors and one stairway to each story and the brick work—constructing five suits of offices in the Monroe-street property, and the 2nd and third stories, and a hall, the on each story, the depth of four offices, about 80 feet, meaning by that 2 rooms to each suit, mant*les*, fire-places, grates, ash-pans, and everything pertaining to the use of coal in these offices. I also put up an office in the store-room, and hoist wheels and gas-works. On the Main-street property we had two rooms—bed-rooms—constructed, and in the Main-street store-room we had shelving and counters, gas-works, and water apparatus, and conveniences. We had the plastering of all two stories and the ceiling of the ground floor, and all the painting of the Monroe street prop-
187 erty, save the doors and windows; the plastering of the bed-rooms on the Main-street te*n*ement, save the ceiling. We had all the painting done of work put up by us—counters, shelvings, and water conveniences. We also put girder and posts in the cellar under the ground-floor of the Monroe-street property to support it, the floor being insufficient to do so. We also put up the awning in front of the Main-street ten*a*ment.

Int. 20. Please state what these cost you.

Ans. The whole of the work cost us the rise of three thousand dollars.

Int. 21. Did you do the work and furnish the materials, or pay for them and the work?

188 Ans. It was all put up by contract, materials and work both, and paid for together.

Int. 22. Itemize it, and state when you paid, and amounts.

Ans. We paid them, as set forth in Exhibit B to bill, amounting, as therein sum'd up, to $2,763.48, without interest. In addition there was the following items: 1st. An item of $253.33 paid to John York—paid for carpenter work and materials, plastering, &c., as shown by paper made part hereof, and marked Exhibit O hereto; Exhibit B, $2,763.48, Jno. York, bill $253.33, are the amounts paid by us. The

items composing the bill, Exhibit B, $2,763.48, are set forth in the following bills: Exhibit P, S. C. Maunt's bill, $180.00; Exhibit Q, S. Mansfields & Co., $100.00; Exhibit R, Jones & Lagg's 1st item,
189 $20.00; Exhibit S, F. A. Park & Co., $38.75; Exhibit T, S. C. Maunt, 880.00; Exhibit W, J. Schoonover, 1,043.55. The bill for awning, $127.68, is Exhibit B to N. J. Wiggins' deposition filed herein. I have not the vouchers for the pump and water fixtures, $43.50; S. C. Mount's bill for wheel and fixtures, $47.75. The vouchers for Jones and Lagg bill I will get duplicated and file herein. Exhibit V, $282 $\frac{25}{100}$, S. C. Mount, is dead, and I have lost or mislaid, and have been able to find vouchers for $47.75. J. Schnoonover is also dead, and I have not his receipt. He died in my debt. We have paid these amounts—the amount of Exhibit B, $2,763.48, and Jno. York's bill, $253.33. The above vouchers show the receipts in our possession.

Int. 23. Did you have any conversation with R. C. Brinkley relative to these matters? If so, state the substance relation thereto
190 at the time done or before and with a view thereof.

Ans. Mr. R. C. Brinkley originally verbally promised me, or the firm, a lease of ten years. When he came to execute the lease he receded from that proposition and declined giving it but for five years. We endeavored to impress upon him the justice of our ten years' lease in consideration of the work that we were doing upon the house, and that we would not be justified in going to the expense on so short a lease. He replied that five years was a long time; that many changes took place during that time, and if, at the end of five years, we desired to retain the property on the same terms, we should be entitled to it. The question was mooted in regard to these im-
191 provements in case we should not take the property after the five years, and I can only say my impression were that Mr. R. C. Brinkley would reasonably compensate us for whatever improvements left that would be of utility to him. These impressions were gathered from him, but the particulars of any conversation detailing the words I could not give.

Int. 24. Did you do any of the work or have it done before the lease was executed?

Ans. Yes, sir; the Main street house was completed except the awning so far as it was to be done by us. I received that property and paid him three months or thereabout before the lease was executed, during which three months we were having the work done on the Main street property. The Monroe street property was not commenced before we
192 rented the Main street property, and after it was built by Brinkley we took the lease for the whole in July, 1859.

Int. 25. Who directed the construction of the Monroe street property?

Ans. Mr. Morgan, of the firm of Morgan and Baldwin, was the architect.

Int. 26. Who had the plan of it made, i. e., how did it happen it was made into offices, &c.?

Ans. I planned it myself.

Int. 27. Who directed the architect how it should be done?

Ans. I myself.

Int. 28. Did Mr. R. C. Brinkley object to this in any way? What did he say or do?

Ans. No, sir. Mr. Brinkley agreed that I should have the direc-
193 tion of its plan of construction when I bargained for it, and promised he would instruct his architect, Morgan, to construct it to meet my views. I suppose he told him, as Mr. Morgan, his architect,

and Mr. Charles Jones, the brick builder, both told me so, and so constructed it.

Int. 29. Do you know whether or not he profited any from the work you had done upon it after the expiration of the five years' lease, or during, after you lost it?

Ans. I do.

Int. 30. State what and how.

Ans. By occupation himself of one of the offices, and from information derived from his tenants that they were renting from him.

Int. 31. Could he not have profited as much without your work?

194 Ans. The part rented out as offices could not have been occupied as offices. The other parts could have been in some kinds of business without the conveniences we made, but not so profitably.

Int. 32. How do you know R. C. Brinkley occupied all of these offices?

Ans. I saw him in the occupation of it in 1866.

Int. 33. What took you there?

Ans. I went there for the purpose of getting remuneration for what we had put upon these buildings.

Int. 34. State the conversation as near as you can.

Ans. I presented a bill of $2,763.48, the sum exhibited with original bill as Exhibit "B" for payment. I first remarked to Mr. Brinkley that he was getting all the advantage of those improvements, that

195 he was getting more rent for the offices than ever I got, and I thought the claim was a just one. His reply was, you'll remember that I hold your notes for the years occupied by the Federals, and as I do not ask you to pay these notes you ought to be satisfied. I objected to his proposition, saying to him that I had never received the value of those notes, and that the only value I could have received for them was the pos'session of the property during that time, for which pos'session I had used every means within my power, that I had frequently resisted the demands of the rental agents of the Federal authority, stating to the agent at all times that we would not relinquish the pos'session of the property unless they brought a military force there to take it; that

196 I had kept the house open during business hours up to the time of its occupation by the Federals; that I had employed a man to be on hand during the usual business hours from the occupation of the city by the Federals to the time of taking possession of the property, which man did nothing but to be in pos'session any moment that I might be absent myself. Mr. Brinkley replied by reiterating what he had first asserted, that he would not ask us to pay those notes, and that was all the relief he could give us.

Int. 35. At what date did your tenants cease to pay you, and why?

Ans. The firm of Brown and Owen had paid us up to 1st Sept., 1862; the balance of our tenants, consisting of those of these offices, had

197 paid up to July 1st, 1862, and the Main street house had paid us up to April 1st, 1862; this was occupied by Ingraham & Lees. All of our tenants notified us on or about the middle of June, 1862, that they could pay us no more rents from the sixth June, 1862, until released by the Federal authorities, who had directed them to pay rents to the rental agent of the military authorities. We wer' never able to collect any more rents afterwards.

Int. 36. Do you recollect the day you were forced to deliver up the portion you occupied?

Ans. Not the day; i' was on or about the 1st August, 1862.

Int. What period of time did the last note paid by you for rent cover?

198 Ans. Up to the 1st October, 1862—for that quarter ending Oct 1st, 1862, for $1,250.00.

Cross-examination:

Defendants' solicitors, waiving all formal exceptions to the deposition, but expressly reserving exceptions to the foregoing answers for incompetency, irrelevancy, and all other objections to which they may be entitled, the same as if objections were specifically set forth after each answer, and which objections, it is agreed, are to be submitted to the chancellor at the hearing, proceeds to cross-examine.

Ques. 1. When did you pay the $1,250 note referred to in last question above?

Ans. It was sued upon since the war and collected by suit by the Planters' Bank, as holders. I don't recollect the time it was paid.

199 Question 2. What efforts did you make to collect the rents from your tenants for the time of the occupation by Federal rental agents of which you have spoken; when did you apply to them, and how often?

Ans. I had several conversations with them, they representing the facts of their being notified by the gov't officers not to pay us. I do not recollect the exact time that I ceased to make application for payment, but certainly not until after the rental agent had informed me that I could not collect them.

Ques. 3. Did you make any application to any of them after that?

Ans. No, sir.

200 Ques. 4. You say you had to put supports under the room fronting on Monroe street; that it was not of sufficient strength. What did you have stored there, and what did this work cost?

Ans. I had stored goods customarily kept in a grocery or commission house—bagging, rope, sugar, coffee, salt, &c. The cost of this work was $23.33—the item in John York's bill, Exhibit O; this is, I think, the entire cost.

Ques. 5th. What was the military organization of which you state R. C. Brinkley was a member; what was the object of the organization? and mention the names of persons, citizens of Memphis, who were members of it.

Ans. I don't remember the names of persons that were members except R. C. Brinkley and A. P. Merrill. So far as I know the object of it was to gather and prepare materials of war and superintend

201 the initiatory organization of military affairs until such time as they could be placed under a regular authorized military officers of the Confederate Government.

Ques. 6. What are your sources of information that causes you to make this statement?

Ans. My sources of information was conversations with this military board at Nashville, which was an organization at the same time.

Ques. 7. Please state as near as you can the date of the transaction about the powder and Mr. Brinkley's statement to you about seeing you paid, and so on, of which you have spoken in your examination in chief.

Ans. From the 27 of April, 1861, through the month of May, 1861, of which I mostly speak, I might have had some conversation with

202 him, Brinkley, prior to April 27th, 1861, about the seizure of the powder by the ordinance officer, acting under direction of that board.

Ques. 8. Was it before or after April, 1861, that you appeared before

the board and saw Mr. Brinkley there as a member, of which you have spoken?

Ans. My impression is it was before the 27th April, 1861. I first saw him acting as a member when I was before the board, and my impression is I saw him also acting as a member when I was before the board after 27 April, 1861. I know I saw him so acting after 27th April, 1861, and as late as May, 1861.

Ques. 9. Was not this military organization of which you speak
203 a temporary affair, and did it not expire about the month of June, 1861, when Tennessee seceeded?

Ans. I do not know when it expired; I looked upon it as a temporary organization; I think it was the latter part of May, or about the first of June, that the board referred me to Gen. Pillow in command here, in regard to my claim, telling me that all such matters had been turned over to him.

Ques. 10. Did it not expire or cease its organization about or soon after that time?

Ans. I do not know; I had nothing further to do with it.

Ques. 11. Don't you know the fact that Mr. R. C. Brinkley went
204 south as a private citizen upon private business; that he had no connexion with the Southern or Confederate Army; and that he returned as a citizen to Memphis long before the surrender, and remained here peaceably and undisturbed like any other citizen?

Ans. I do not; I know nothing of his relations to the Confederate Gov't after my intercourse with him as a member of the military board, save from hearsay.

Ques. 12. Do you mean to state, in the face of def't Brinkley positive swearing to the contrary in his answer, that there was any agreement between you and him that he was to pay you for the improvements, or
do you mean that there is an impression upon your mind that he
205 would do so, and is not this impression based upon your idea that he ought to do so, and the idea you then had that he ought to do so, rather than upon your recollection of anything said by him at that time which would justify that conclusion?

Ans. The conversation with Mr. Brinkley at the time of the execution of the lease, in which he declined to give us the term of the years as first agreed, was clearly of a character to impress me with the fact that he would not permit us to lose by our improvements in reducing the time from ten to five years; furthermore, I believe and so stated to my partner, that we ran no risk of losing our improvements; that they
were permanent ones, and would be paid for rather than to
206 have removed, and the house left in condition as received by Mr. Brinkley.

(Defendants' solicitors objecting to writ' down what the witness answers as to his belief, and what he stated to his partner, but compl't's solicitor requesting that it should be written down, and for def'ts' solicitor then to except, it is accordingly written down.)

Ques. 13th. Did the conversation of which you speak as having had with Mr. Brinkley occur prior to or contemporaneously with the execution of the lease?

Ans. My impression and my best recollection is, that it occur'ed prior to the execution of the lease, and that the lease laid over for some days in consequence, before being signed, in consequence of the misunderstanding about terms of lease.

207 (Def'ts' solicitor expressly excepts to all the testimony as to

this conversation, it now appearing that it was prior to the execution of the lease.)

Ques. 14. Where were you the day the corporal with his guard of soldiers took possession of the building?

Ans. I was in the city; I was in and out of my office every few hours.

Ques. 15. Were you personally present when this squad of soldiers took possession?

Ans. No, sir; I had not been absent to exceed an hour, when on entering to my store-room I found a sentinel in possession, which my warehouse man told me had been placed there by a corporal guard.

208 Ques. 16. Where was the man you called Vaughan, when he told you what you have stated about Mr. Brinkley abandonment of premises, being disloyal, &c., and when was it?

Ans. I think his office was in corner building of Madison & Main; the conversation you ask about occurred in this office; I think his office was there; it occurred in his office wherever it was. It was near six weeks before the guard took pos'session of that part I have spoken of that it occurred. They took possession about the first part of August.

Ques. 17. In answer to question 24 in chief, you say you had completed the Main street improvements 3 months about before the

209 lease was executed, and had paid him for it. What do you mean by had paid him? Had paid whom, and for what?

Ans. I mean that we received that portion of the premises and paid three months' rent for it, in order to secure the whole premises; I mean paid Brinkley. I do not remember the date paid.

Re-examined:

Ques. 1. In answer to cross examination question No. 13, you say the matter was laid over some days; at whose instance—who was deliberating and why?

Ans. At the instance of Gates, Wood and McKnight, for the reason that we were much disappointed at the term of time being made

210 five instead of ten years, and desired to consider the matter.

Ques. 2. Then the work which Gates, Wood and McKnight did on that lease-hold property, or the property afterwards covered by the lease, was begun long before the lease was executed, was it?

Ans. The work done in the Main street part of said premises was all done prior to execution of lease save the water and gas fixtures, of which I am not certain. The shelving, counters, and their painting were.

And further saith not.

SAM. M. GATES.

Sworn to and subscribed before me Oct. 6, 1870.

M. D. L. STEWART, *C. & M.*

(Endorsed on deposition:) Filed Oct. 6th, 1870.

M. D. L. STEWART, *C. & M.*

211 *Exhibits to depo. of S. M. Gates.*

EXHIBIT O.

Messrs. Gates & Wood to John York, Dr.

Carpenters' work and materials with plastering, as per contract	220 00
Bulkhead with materials in cellar	10 00
Girder with mat. in cellar	23 33
	253 33
Cr.	
By cash	70 00
Rec'd payment.	183 33

JNO. YORK.

Exhibit O to S. M. Gates' deposition.

Exhibit P to S. M. Gates' deposition.

Mess. Gates, Wood & McKnight to S. C. Mount.

New house expense:

For fitting up store in the Brinkley block as p'r agreement... $180 00

Memphis, Jan. 27, '59.

Rec'd payment.

S. C. MOUNT.

212 *Exhibit Q to S. M. Gates' deposition.*

MEMPHIS, TENN., *March 19th*, 1859.

Messrs. Gates, Wood & McK. bought of S. Mansfield & Co.

For closing window as per agreement 100 00

Rec'd payment.

S. MANSFIELD & CO.,
REGAN.

New house.

First item—Exhibit R to S. M. Gates' deposition.

MEMPHIS, *June* 1, 1859.

Messrs. Gates & Wood, bought of Jones & Tagg.

Mar.	4. Painting store-room	20 00
	15. Varnish	50
	25. "	5 75
April	4. Patant orgur	2 80
	23. Paint ecc	41 50
	27. Box (per child)	1 25
	May 3. 1 gal. japan drugs	1 75
213	" 20. green paints	3 40
		76 95
Error April 23rd		20
		76 75

Rec'd paym't.

JONES & TAGG.

All settled a'd paid.

Exhibit S to S. M. Gates' depo.

MEMPHIS, TENN., *Aug.* 24, 1859.

Messrs. Gates, Wood & McKnight, to F. A. Park & Co.

19th.	To 44 feet gas-pipe in offices, 20	8 80
"	To lengthen out 3 gas pendants	2 70
"	3 No. 22 light pendants, 3.25	9 75
"	12 " " " 3.75	7 50
"	2 joints brackets, 1.75	3 50
"	Work putting up & pendants & two brackets & capping pipes	2 25
"	7 new cupron-pipes, 25	1 75
"	1 connection to meter	2 50
		$38 75

214 Rec'd paym't.

F. A. PARK & CO.

New house.

Exhibit T to S. M. Gates' depo.

Mess. Gates, Wood & McKnight, to S. C. Mount.

1859.

Aug. 21.	For work done at their new house on Monroe st., as per agreement	$714 00
Do	do.	140 00
"	Widening front stairs & putting doors at the same, &c.	11 45
"	5⅔ y'ds enamelled cloth, 75c	4 25
	6 eyes for pulling rope to run through, 30	1 80
"	Alterations on desk, &c	5 50
"	Foot stool	3 00
		880 00

Rec'd payment.

S. C. MOUNT.

New house.

215 MEMPHIS, *Oct.*, 20*th*, 1859.

Mess. Gates, Woods & McKnight to Jones & Tagg, Dr.

Aug. 8.	To glazing 32 lights.	
"	12×24 @ 50	16 00
"	38 " 38 "	
	14—24 " 75	28 50
"	14 " 18-14-24	
	18—24 @ 100	14 00
	Painting 479 yds., 3 coats @ 25	119 77
"	Graining 132 yards @ 50	66 00
"	Painting 3 mantles	6 00
	Glazing 36 lights 14—24—75	27 00
Oct. 20.	Painting & varnishing top of counter	5 00
Feb. 27th, 1860.		$282 25

Rec'd payment.

JONES & TAGG.

Duplicate.

REC. 323—4

Exhibit W to S. M. Gates' d'po.

216 MEMPHIS, *24th August*, 1859.

This is to certify that we have measured and estimated the plastering contained in the store house of Gates, Wood and McKnight as done and furnished by J. Schoonover, which is as follows:

One scaling	$43\times20\frac{7}{10}$	8901 ft.
Spaces, jambs, &c.,	26×15	390
" Hall,	$83\frac{1}{2}\times8\frac{7}{10}\times11\frac{9}{10}$	2920
" R,	$20\times26.8\times11.9$	1650
Jambs,	$2\frac{1}{2}\times11.9$	29
4 Stairs,	16×3	192
12 Rooms,	$22\times26.8\times11.9$	1750
13 "	$20\frac{1}{2}\times26.8\times11.9$	1655
14 "	$19.8\times26.8\times11.9$	1639
15 "	$36\times19.7\times11$	1934
Stairs,	34×11	374
Jambs,	$2\frac{1}{2}\times11$	27
2 R.,	$22.3\times36\times11$	4168
Stairs,	$33\frac{1}{2}\times11$	368
"	$33\frac{1}{2}\times11$	368
1 R.	$20\times36\times11$	1952
Stairs,	$33\frac{1}{2}\times11$	368
217 Stairs,	25×8	200
'athing,	5×13	65
Space,	5×5	25
Stairs,	$33\frac{1}{2}\times11$	368
1 Room,	$20.2\times36\times11$	1963

9)31306(3478½
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Making 3,478½ yds., @ 30c., $1,043.55, all of which being correct, the same is respectfully submitted.

MORGAN & BALDWIN,
Architects & Measurers.

Fee 10$.

Deposition of R. C. Brinkley.

S. M. GATES AND OTHERS
vs.
218 R. C. BRINKLEY & OTHERS. } 2928.

Deposition of R. C. Brinkley, taken at office of clerk and master of second chancery court on 6th October, 1870, in presence of L. W. Finlay, esqr., sol'r compl'ts, and W. L. Scott, esq., sol'r for def'ts, taken on behalf of def'ts.

Witness being sworn says:

Ques. 1st. (Def'ts' solicitor expressly denying the right to enquire into verbal agreements prior to or contemporaneous with a writing, but inasmuch as the questions were asked compl't Gates in his deposition, asks the following questions to be read if the statements of said Gates are competent testimony.) Did you ever agree either before or at the time of the making of lease, the exhibit of bill, with S. M. Gates or
219 Gates, Wood and McKnight, that you would pay them for improvements they might place upon the property in controversy?

Ans. I have no recollection of ever making any agreement with S. M. Gates or with Gates, Wood, and McKnight, or either of them, in reference to the property leased by me to them, except what is incorporated in said lease and the endorsement thereon. I make it an invariable rule, in renting or leasing property in Memphis, to reduce everything that is intended to bind either party to writing and not rely upon the recollection either of myself or the party renting or leasing the property for the interpretation thereof.

Ques. 2. Have you any recollection whatever of the interview spoken of by S. M. Gates in answer to question 34 in his deposition in
220 which he says he presented a bill of $2,763.48? State if you have read Mr. Gates' answer to this question. Did you ever recognize his right to any remuneration for such improvements? Did you at that time ever agree to make no claim on these notes, or did you ever do so at any other time? Was it or not always your purpose to claim payment of them? If Mr. Gates, in any interview between you, understood you as agreeing or intimating that you did not demand and claim payment of these notes, totally misunderstand what you said? What notes were then held against Gates, Wood & McKnight which it was not your purpose to enforce?

Ans. I recollect that Mr. Gates, or some member of the firm of Gates, Wood & McKnight, presented to me a bill of charges for improvements which were said to have been made by them on the premises
221 leased of me and requested me to allow the amount as a credit on their notes given for rent, which I declined to do, but said if they would pay the rent notes they were at liberty to remove all'y improvements made by them, provided it could be done without injury to my building. That I was always willing that they should do. They never applied for the removal of their improvements, and I employed a mechanic to remove what Gates, Wood & McKnight had placed in the building and allowed the mechanic to have the materials placed their by Gates, Wood, and McKnight for removing the same. This I did after waiting several years after the expiration of their lease. I never intended to release or surrender my claim to collect the notes sued upon,
222 and if Mr. Gates understood me as agreeing or intending any such release or surrender, he was mistaken and misunderstood me. I hold notes not sued upon which I do claim the right to c'llect, and Mr. Gates understood me to make any intimation of release it was in reference to those notes not sued upon and which I have offered to surrender at any time called upon if my attornies have not already done so, as they have been so instructed by me.

Ques. 3d. Upon your return from the South in 1864, did you find Gates, Wood, and McKnight, or any of them, in possession of the premises, either by themselves or tenants? Did the persons in possession claim to be the tenants of Gates, Wood, and McKnight or to hold the same under or for them in any way? Did either Mr. Gates, or any of
223 the firm of Gates, Wood, and McKnight, do or say anything show-

ing that they were in possession or desired possession or proposed in any way to assume possession?

And what did you do when you ascertained the facts you have stated in answer to the above?

Ans. When I returned to Memphis in 1864, I did not find Gates, Wood, and McKnight, or either of them, in possession, nor did I find any one in possession claiming under them or claiming to be their tenants. Gates, Wood, and McKnight neither did or said anything to my knowledge showing that they were in possession or desired to have or hold possession of the property. I found a Mr. J. B. Cook in possession of the property on Monroe street, and I believe Tecknor & Co.
224 occupied the property fronting on Main street, all of whom agreed and did pay rent to me or my agent after that time. I had no disposition to exchange Gates, Wood, and McKnight as tenants for any other, and would have preferred them to remain in accordance with the lease.

Ques. 4th. Did you understand from Cook and the other persons in possession that they were not in their as tenants of Gates, Wood, and McKnight? And if so, did you understand this from them before you made agreement with them to occupy as your tenant?

Ans. I did understand from the tenants that they were not occupying the premises as tenants of Gates, Wood, & McKnight, otherwise I certainly would have made no arrangements with them, preferring,
225 as I did, my old tenants, known to be responsible, for tenants whose responsibility I know nothing or little about.

Ques. 5. Did you recognize the right of any person to release Gates, Wood, and McKnight from the rents during the time of these notes in controversy, or during any other time? Did you have any agent authorized to make any such arrangement, and what knowledge, if any, had you that any such arrangement had been made by your son Hugh Brinkley, or any other person, if such arrangement was made?

Ans. I never authorized any person to release Gates, Wood & McKnight from the rent or payment of the notes in controversy. I had no agent authorized to make any such release, and never heard
225¼ that such release had been made or pretended to be made by my agent, nor by my son Hugh or any one else, nor do I think such release was made or pretended to be made by any one, certainly not to my knowledge.

Ques. 5. How did you go south, as a citizen or otherwise; how did you remain south, as a citizen or otherwise; how did you return in 1864, as a citizen or otherwise; what business took you south in 1862?

Ans. I went south as a private citizen; never had the honor to go or act in any other capacity, then, before, or since. I returned as a citizen in 1864, and have occupied no other position since. I went south on private business in no way connected with the military of either the Federal or Confederate Armies or Government.

225½ Cross-examined:

Int. 1st. Were you or not a member of the military board or organization of which A. P. Merrill was chairman, and did you not act on that board, and did you not attend its sittings in 1861 preparing for resistance to the Federal authority?

Ans. I was appointed by some person or authority, which I now do not remember, a member of a board called a military board of which A. P. Merrill was, I believe the chairman. I have forgotten from what authority this appointment emanated, whether State, Confederate or

city. There was at that time a general confusion in everything pertaining to the government. Sometimes the State authority as-
226 sumed to act, sometimes the Confederate, at other times the city, or some military commander, and it is difficult at this length of time to recollect under whose authority acts were done.

Int. 2. Did you or not contribute money or clothing to arm and equip the Shelby Grays, Tennessee Guards, or other companies then enlisting and organizing for the purpose of resistance to Federal authority and in armed opposition to it?

Ans. I contributed money to many companies organized in Tennessee; I do not now remember what companies. These companies were organized for the purpose of resisting Federal authority.

Int. Did or not Gates, Wood & McKnight enter into possession
227 of the Main street tenament before the Monroe street tenament was completed?

Ans. I do not remember.

Int. 4. Which was completed first?

I have no recollection on that subject, not having my books, papers, and contracts for building those houses before me at present.

Int. 5. The lease is signed July 1st, 1859; were the buildings completed then or not?

Ans. I do not remember.

Int. 6. Can you remember the reason of the year the buildings were completed?

Ans. I cannot. The lease is written, and I presume contains
228 all the agreement of the parties. It sometimes happens a lease bears date prior to and sometimes subsequent to the completion of a building. My recollection is the buildings were completed near about the time the lease bears date. It might have been a short time before or after that date.

Int. 7. Did or not you receive six hundred and twenty-five dollars rent on a part of this property prior to the execution of the lease from compl'ts?

Ans. I have no recollection on that subject, but if I received any such sum, must have given a receipt to the tenants for the amount.

Int. 8. Can you state whether or not compl'ts were in posses-
229 sion of the property in the pleadings mentioned, the leasehold, or a portion of it, prior to the execution of the lease?

Ans. I do not remember when they took possession of any part of the property leased to them.

Int. 9. At whose instance was the Monroe street tenement cut up into offices, compl'ts' or yourself? i. e. did you or compl'ts direct and instruct the architect and construction in this matter?

Ans. I had nothing to do with cutting up the Monroe street tenement into offices at the request of compl'ts. I endorsed upon the lease my permission that they be permitted to sublet any portion of the building, the lease having prohibited such subletting without my written
230 consent. I presume it was for the purpose of cutting up the upper stories of that building into offices and subletting them that my assent was obtained permitting them to sublet.

Int. 10. Who did the painting, &c. on the Main street tenement?

Ans. I have no recollection. Do not remember who painted any part of the building, but believe Cha's Jones was the contractor who agreed to deliver the building to me complete; but do not state that positively, but that is now my impression.

Int. Plastered, painted, and all?

Ans. That is my present impression. But I of course do not mean he completed or had anything to do with the cutting up into
231 offices of the Monroe street tenement.

Int. 12. Did you ever enter into any other written contract than the one mentioned in the bill with compl'ts, in regard to this property or any part of it?

Ans. I have no recollection of having done so, but if I have they should produce it. My rule is to make no contract and have no understanding in regard to contracts without reducing them to writing and delivering the writing or copies to the parties affected by the agreement. I have no other written contract in my possession in reference to this property, and have no recollection of ever having made any except the written lease, and the endorsement thereon in the pleadings mentioned.

232 Int. 13. Was it or not usual to deliver tenements completed to tenants upon leasing them in Memphis, at the dates herein?

Ans. Completed is what many landlords and tenants would very naturally and honestly differ about. My practice in renting houses is to rent them as they are at the time of renting, and if anything more is to be done to the building on my part, to state it distinctly in the lease or other writing so that there can be no misunderstanding about it.

Int. 14. Had compl'ts possession of the leasehold before the execution of the lease?

Ans. I do not remember.

233 Int. 15. Did you pay for the plastering, painting, shelving, awning, grates, mantles, in these tenements, or any portion of them? If not, who did?

Ans. I paid for all such a house or houses as I rented, but do not know what was done or paid for by my tenants.

Int. 16. Did you pay for these in instance?

Ans. As above stated, I paid for the building and finishing such tenements as I leased, and if anything else was done by my tenants it was without my authority or knowledge.

Int. 17. Answer the 15th question distinctly; did you or not
234 pay for the plastering, painting, shelving, awning, grates, mantles, in these tenements or any portion of them? If you paid anybody, whom did you pay?

Ans. I contracted for the building the block in which these tenements were a part, as I now remember, with Cha's Jones. I do not remember whether plastering, painting, shelving, grates, and mantles were mentioned in that contract, but presume they were, and if so, I paid for them. The awning, I think, was not included in the contract, and my recollection is the various tenants put up awnings before their own tenements. All of which I have had removed and gave the material to the party removing for doing it, that being the best terms upon which I could have it done.

235 Int. 18. Produce that contract if it so shows and make it a part of your deposition. Did you give him a receipt for these things?

Ans. This contract was made about twelve years ago, and it may be among my old papers, as I endeavored to preserve all such things. If required I will search and endeavor to produce it, but could not do so without some time to look for it.

(He is required to produce it.—FINLY for compl'ts.)

Int. 19. Did you agree to pay for the awning which you say the tenants put up, i. e. that before this property?

236 Ans. I agreed to pay for the awning after the expiration of the lease and after payment of all rents. This agreement applied only to the Main street front. I do not think any awning was ever erected on the Monroe street front.

Int. 20. What notes are those referred to by you in your answer to direct question No. 2, on page 5, which you refer to by saying, "I held notes not sued up which, &c." Are they the notes referred to in the bill, and which were given by compl't, and for the time you or your son Hugh had possession of this leasehold, the last three or four notes for the term, and which your counsel proposed to deliver up in this cause, or not; if not, then what?

Ans. The notes referred to by me are those described or men-
237 tioned in the question to which this is the answer.

Re-examination:

Ques. 1st. Do you mean in the last answer the notes which in your answer you say you desired to be given to complainants?

Ans. That is what I mean.

Ques. 2d. Do you pretend to recollect now with distinctness about the plastering, painting, shelving, &c.? And what is your recollection about your contract with Jones, whether it was in writing or not?

Ans. I do not recollect all that was embraced in the building contract with Jones. I only know that he was to complete the Main street
238 houses ready for occupation, and that Charles Jones and S. C. Mount were to complete the building on Monroe street, ready for occupancy by tenants to whom I agreed to leave the property. The contracts with Jones and with Mount were in writing.

Ques. 3d. Do you profess to be able at this time to state the contents of these written contracts with accuracy, and do you mean you paid Jones for the work you contracted with him to do? Will you search for the written contract, and all receipts connected therewith or other papers connected therewith, and if you can find them file them with your deposition?

Ans. I cannot, of course, at this length of time recollect all the particulars of the contract, referred to. I will search for the con-
239 tracts refer'ed to, and if found, will file them with this my deposition in this case.

Cross-examined as to S. C. Mount matter:

Int. Do you mean to swear that you paid S. C. Mount for plastering or any work on the Monroe street tenement?

Ans. I do not remember what part or how much work Mr. Mount did. I mean to say I paid him all I agreed to pay him for the work he did do. My recollection is he did all the wood-work and painting on the Monroe street building, and everything that was required for a grocery and commission house, as this house was intended for that purpose, except the brick and stone work done by Mr. Jones.

240 And further saith not.

R. C. BRINKLEY.

Sworn and subscribed before me Oct. 6, 1870.

M. D. L. STEWART, *C. C. M.*

Formalities waived. Contracts must be produced. Exceptions to competency reserved.

L. W. FINLY,
Sol. for Compl'ts.

(Endorsed on deposition of R. C. Brinkley:) Filed Oct. 6, 1870. M. D. L. Stewart, C. & M.

241 *Contract between Charles Jones and R. C. Brinkley.*

This article of agreement witnesseth, that whereas R. C. Brinkley contemplates the erection of a block of buildings on lots No. 99 and 100 on Main street, in Memphis, fronting on said street 149 4/12 feet and running back 100 feet, to be five stories high, the workmanship, finish, and materials of which are to be according to plans and specifications furnished and made a part of this contract, signed respect*fully* by the undersigned R. C. Brinkley and Charles Jones. The cellar is to be eight deep, clear of the joist, the height of the first story is to be fourteen feet in the clear in the tenement next the all'y on Main street, and
242 the height of the first stories in the other tenements will of *of* course increase according to the grade of the street, as the lintel over the front doors is to prerent a straight line course. The height of the second story is to be 12 feet in the clear, the height of the third story eleven feet in the clear, the fourth story 10 feet in the clear, and the fifth story sufficiently high to admit the windows and a heavy cornice according to the front elevation drawn by Jno. L. Morgan, and here made a part of this contract.

The front basement wall to be of the thickness of 3 bricks, the other basement walls to be 2½ bricks thick, all with foundations and heels according to plans and specifications made out by said Morgan, and being a part of this contract.

The inside basement wall to be of the thickness of 2 bricks and
243 all the outside walls above the basement to be of same thickness. The other walls, inner and outer, to be 1½ brick thick. The cellars are all to be paved with brick; a cistern in each tenement, 15 feet deep and 12 feet in diameter in the clear, walled up, plastered well so as not to leak. The pipes for conducting the water thereto to be properly located and so arranged as to waste the water when the cistern is full. A privy in each ten*a*ment deep enough for perfect drainage, well walled up with good brick, and the top fixtures nice & comfortable; flues to carry off miasma, one to lead from each privy. The brick of the entire building to be of the most durable and best kind and quality, and laid in the best and most workman-
244 like manner. The mortar is to consist one-third lime and two-thirds good, sharp sand well mixed together. The brick for the entire building is to be of the best and most durable kind and quality, and laid in the best manner; the mortar to be well flushed in, and all crevices filled. The front on Main and Monroe street to present pillars and projections, pilasters, &c., as represented on the plans and elevations here made a part of this contract. The front tier of joists to be 2½ x 15 ins.; all the others to be 2½ x 12 ins., all of best, sound cypress, clear of pu'ch flaws and windshakes; the upper tier of joists may, however, be 2 x 12 inches, all joists to be sound and well seasoned. The following plank of the entire house to be 1⅛ ins. thick of yellow pine, well seasoned, nicely and smoothly dressed, tongued, and gro'ved; well laid down with secret nails; the planks on the
245 first floor not to be wider than 3 inches, inclusive of the tongue; each tier of joist to be double-bridged with timbers 2½ x 3 inches thick, the joists not be more than 16 inches apart from center to center in any story of the building. The wall of each tenement to extend above the roof at least 18 inches, so as to form fire walls between

the several tenements. The front of the first story on Main street to be of iron according to the plan and specifications here referred to; the openings in first story to be one door and two windows for each house as represented on said plan; the opening of the other stories to be as represented on the plan, the sills of which to be of stone, and the coping of iron; the finish is to be as per specifications; the cornice is also to be as per plan and specifications, and particular attention is
246 to be paid to the excellence of the finish thereof with retu on the alley and on Monroe street; the entire building to be covered with best roofing tin plate, and put on the best manner; well soldered at the joints, and painted in accordance with the most approved manner of painting tin roofs; all the tin pipes and gutters to be of best tin for the purpose, and well painted; the sheeting to receive the tin to be of uniform thickness, one inch thick, smoothly laid down; the roof to be firmly sustained, the plank s'ason' so as to prevent the roof from sinking even in a slight degree; the Main and Monroe street fronts to be stuccoed as represented on the plan so as to represent stone or marble; particular attention is to be paid to the excellence of the finish, as well as to its durability; the first stories of all the tenements
247 are to be plastered with three coats, finished off with plaster of Paris, so as to give the room all elegant appearance; the entire second and the front half of the third story are to be plastered with three coats of plastering on the Monroe street and all'y corner houses, the rear of third story plastered. It will be seen from the plan that stairs leading from Monroe street to the second floor cause a passage 12 feet wide in all the stories, and the passage on second and third floors are to be also plastered with three coats. The plan of the second floor is here referred to, and studding is of course to be used on either side of the passages, and also to separate the front from the rear rooms, and it is to be 4 ins. wide, firmly fixed, lathed, and plastered; the
248 doors are to be in the 2nd and 3rd stories 2 in's thick and of six pannels, made of white pine, 4 feet wide, 8 f't high, the casing to be wide, thick, and substantial; rooms, partitions, doors, &c., to be made in said stories wherever indicated by the plans. The doors to be grained and varnished. A base 10 in's wide, besides moulding to be seen in both passages, and around each room in said stories. All the wood-work of the entire building to be painted with three coats of paint, and all the doors to be grained and varnished. Stairs are to be even where indicated by the plan above referred to according to specifications. Hoist-wheels of best style and pattern in each tenement according to specifications. The glass in front show-windows of first story to be of best French plate glass, and the other glass to be of best
249 Pittsburgh glass, counting rooms, &c., sleeping apartments, &c., are to be made at points, and furnished off agreeably to the plans and specifications, and so are mantles, grates, hearths, coal-vaults, fireplaces, flues, &c., and all other things mentioned in said plans and specifications. A stone pavement all along Main and Monroe streets equal to that in front of Lea's Block, at corner of Court and Main street, is to be laid down. There is to be iron grating along Monroe st., and also in rear of the houses, sufficiently wide to render the cellars light, and the iron is to be good and strong and well fixed so as to make the job substantial and excellent, of very best quality.

The undersigned, Charles Jones, agrees to furnish all labor and materials, make excavations, &c., lay brick and furnish all lumber,
250 glass, painting, &c., and everything else necessary mentioned above or in the plans and specifications referred to and made a

part of this contract, and in short, to perform all labor and furnish all materials necessarily to completely furnish said block of buildings, and to deliver the keys to said Brinkley on or before the first day of January, 1859. The building is expected to be a fine one, and the best of work and materials is stipulated for. A brick vault to be made fireproof is to be built in the tenement on Main street. The size, &c., is to be determined hereafter, as Brinkley may cho'se. The hardware is to be of quality corresponding with the style and excellence of the building, namely, of first quality.

On delivery of the keys to Brinkley, he agrees to execute
251 to Jones his two notes, one for two thousand dollars, payable respectfully at three and six months, and to assign and transfer all the stock now owned by said Brinkley in the Bank of Memphis and Chattanooga upon which Brinkley has paid about $18,000. Said Jones is to take up and deliver to Brinkley his stock note in said banks for unpaid stock. Brinkley further agrees to pay Jones, when the buildings are completed and delivered, the sum of forty thousand dollars cash. Until the houses are completed, Brinkley is to have the dividends, if any, on bank-stock. And the first dividend declared after transfer is to be apportioned, and Brinkley is to be entitled to his portion of the
252 dividends earned before the transfer.

Witness our hands February 15th, 1858.

*CHAS. JONES.
*B. C. BRINKLEY.

Settled in full.
(Endorsed:) Settled February 7th, 1859.

Notes of Gates, Wood & McKnight.

$1,250$^{00}_{100}$.] MEMPHIS, TENN., *July 1st*, 1859.

Three years and three months after date we promised to pay to the order of R. C. Brinkley twelve hundred and fifty dollars at the Branch Union Bank of Tennessee, value received for rent storehouse on Main and Monroe streets, Memphis.

GATES, WOOD AND McKNIGHT.

253 $1,250$^{00}_{100}$.] MEMPHIS, TENN., *July 1st*, 1859.

Three years and six months after date we promised to pay to the order of R. C. Brinkley twelve hundred & fifty dollars at the Branch Union Bank Tennessee, at Memphis; value received of rent storehouses on Main and Monroe streets, Memphis.

GATES, WOOD AND McKNIGHT.

$1,250$^{00}_{100}$.] MEMPHIS, TENNESSEE, *July* 1, '59.

Three years and nine months after date we promised to pay to the order of R. C. Brinkley twelve hundred and fifty dollars at the Branch Union Bank of Tennessee, at Memphis; value received for rent storehouses on Main street, Memphis.

GATES, WOOD AND MEMPHIS.

254 $1,250$^{00}_{100}$.] MEMPHIS, TENN., *July 1st*, 1859.

Four years after date we promised to pay to the order of R. C. Brinkley twelve hundred and fifty dollars at the Branch Union Bank of Tennessee, at Memphis; value received for rent storehouses on Main streets and Monroe, Memphis.

GATES, WOOD AND McKNIGHT.

*Erased in the original.

$1,250.00.] MEMPHIS, TENN., *July 1st*, 1859.

Four years and three months after date we promised to pay to the order of R. C. Brinkley twelve hundred and fifty dollars at the Union Bank of Tennessee, at Memphis; value received for rent of storehouses on Main and Monroe streets, Memphis.

GATES, WOOD AND MCKNIGHT.

255 *Deposition of J. M. Provine.*

S. M. GATES ET AL.
vs.
R. C. BINKLEY.

Deposition of JAMES M. PROVINE, a witness of defendants, taken without notice, which is waived, at the office of the clerk and master on the 7th day of October, 1870, in the presence of Luke W. Finlay, esq., solicitor for complainants, and W. L. Scott, solicitor for defendant.

Said witness, being duly sworn, says:

Question 1st. How long have you resided in the city of Memphis? Were you engaged in the real estate business in Memphis before
256 the war in buying, selling, leasing, renting real estate, or any of these things; if you have an acquaintance with the business of renting real estate please state what was the customary price to be paid agents by landlords for hunting up tenants, renting out the property, taking leases and rent-notes, and collecting the rent-notes; what per cent. on the rental would have been a reasonable compensation for such work? I refer particularly to the years 1859 & 1860.

Ans. I have resided in Memphis since 1841. I was engaged in the real estate business for several years before the war, purchased and sold real estate, and renting out property and collecting the rents in
257 many cases. I would rent the property and take notes and make leases and hand over the notes to the owners and they collect them. When I would get the tenants and collect the rents the usual compensation charged was 5% upon the amount collected. When I would get the tenant and take their notes and hand them over to the landlord I did not charge so much. The compensation was generally agreed upon between the parties. These charges had reference to 1859 & 1860. I consider 5% for renting and collecting the same a fair and reasonable compensation at the time above mentioned.

Cross-examined:

258 Int. 1st. Were you or not familiar with the Brinkley Block in those years?

Ans. I know this block as well as any block in the city.

Int. Would you or not consider $5,000 per annum on a lease for five years, say, from July 1st, '59, a fair and reasonable rental for the tenants in that block, say, the two mentioned in the pleadings, to wit, the Monroe st'eet tenement occupied by Ingraham & Lees, next south adjoining S. Mansfield & Co., and the Monroe st'eet tenement, the one next the all'y & fronting on Monroe st'eet, from good and solvent tenants like Gates, Wood & McKnight, and would not a landlord do well to rent out such property during those years at such rates to same parties at
259 such rates have been doing very well?

Ans. It is almost impossible at this date to say what rents were reasonable and just in those two houses for the years 1859 & 1860.

I am inclined to think that the amount mentioned, say, $2,500 for each two houses for these two years would be rather low, situate as they were in or about the center of business, but would consider it an unreasonable high rent for five years from 1859, which would embrace the war.

Int. 3. Suppose there were one subtenant on Main and one on the lower floor on Monroe, & four or five offices subtenants on the
260 second story, and four or five bed-rooms on third story of five subtenants on the Monroe street tenement, and the entire nominal rent from all these subtenants were from $6,225 to $6,725$\frac{00}{100}$, would or not a landlord be making a fair and good rental to get $5,000 per annum for the whole of the two tenements and from *and from* one good and solvent tenant like Gates, Wood, and McKnight—were saved the risk, trouble, & annoyancy of renting out to so many various tenants as these subtenants whose nominal rental was $6,225 to $6,725, and they continually changing as such tenants did in Memphis in those years—1859 & 1860?

Ans. This is rather difficult to answer, but am of the opinion
261 that the $5,000 to a good and solvent tenant such as Gates, Wood and Co. have always had the reputation of being would be preferable to a much larger amount subject to subtenants. Many occupants of stores and offices in Memphis are frequently changing—not permanent, and much risk in losing the rent on account of the charges. Offices particular were very hard to keep good paying tenants in these; therefore think the $5,000 from said tenants would be pref*f*erable to the $6,225 to $6,725 mentioned above.

Furthermore this deponent saith not.

J. M. PROVINE.

Defendant by solicitor expressly excepts to the cross-examination of being in relation to matter not responsive to the examination-
262 in-chief, and declines to examine the witness on re-examination, as there has been no cross-examination in this deposition. He objects to answers to complainants' question as incompetent testimony, for other reasons, to shown in argument.

W. L. SCOTT,
Sol. for Def't.

(Endorsement:) Filed October 7th, 1870. M. D. L. Stewart, C. & M.

Final decree.

STATE OF TENNESSEE,
County of Shelby:

Be it remembered that at a term of the second chanc'y court of
263 Shelby County, began and held at the court-house of said court in the city of Memphis, on the first Monday, it being the 3rd day of October, 1870—present and presiding the honorable Edwin M. Yerger, chancellor—the following proceedings were had, to wit:

NOVEMBER 28*th*, 1870.

S. M. GATES, A. M. WOOD, AND MILTON McKnight, firm of Gates, Wood, and McKnight,
vs.
ROBERT C. BRINKLEY.

Be it remembered that this cause came on to be finally heard and de-

termined before the honorable E. M. Yerger, chancellor, presiding in the second chancery court of Shelby county, on the 17th day of
264 October, 1870, upon the pleadings, exhibits, and proofs in the cause, and argument of counsel having been heard, and the cause considered by the court, and it appearing to the court that the said R. C. Brinkley having declined all purpose of attempting to collect the notes refer'ed to in the pleadings, which fell due after the first of October, 1863, and having brought them into court and filed them with the papers in this cause to the end that they might be delivered up to complainants and cancelled, and the said notes being of the following description, viz: All being dated Memphis, July 1st, 1859, and each being for the sum of $1,250, and due respectively January 1st, 1864, April 1st, 1864, and July 1st, 1864, and each payable to the order of R. C. Brinkley, the same are hereby ordered and decreed to be cancelled
265 and extinguished, and it appearing to the satisfaction of the court that there was no seizure of the leased premises by the Government of the United States, or by the military authorities thereof, or by any authorized agent of the same, but that such seizure as may have occurred was wholly unauthorized, illegal, and the persons participating therein were "tort-feasor," for whose conduct the defendant, R. C. Brinkley, was in no way responsible, is of the opinion, and so orders & decrees, that such seizure and occupation of the premises constitutes no defence to the payment of the rent notes during the period of such seizure, nor is there any defence shown in the record by the complainants entitling them to be free from the obligation of paying the five
266 notes sued upon refer'ed to in the bill and answer. And it further appearing to the satisfaction of the court that there was no agreement between complainants and defendants that complainants should be compensated for the improvements they may have placed upon the premises, nor any contract between the parties in relation thereto, doth order and decree that the amount claimed by complainants for said improvements, a bill of which is presented in the case by them, constitutes no offset to or part payment of the notes, and that no obligation rests upon defendant to allow the same as a credit upon said notes or to pay or compensate the complainants therefor; but the court is of the opinion and doth so order that defendant is entitled to
267 collect said five notes, and that the only credits thereon that complainants are entitled to is the amount of twenty-three $\frac{38}{100}$ dollars paid by complainants for putting supports under the room fronting on Monroe street, and the sum of $127\frac{08}{100}$, which by agreement of the parties was to be credit' upon the last of the five notes sued upon, to wit, the one falling due the 1st of October, 1863.

And the court is of the opinion that but for the reasons hereinafter shown the bill of complainant should be dismissed and the injunction dissolved, and defendant permitted to take judgment upon his notes in the suits pending at law; but inasmuch as complainants have called upon defendants to produce and file said five notes in this cause,
268 and that in obedience thereto the defendant has filed them herein, which said five notes are all dated Memphis, Tennessee, July 1st, 1859, all payable to the order of R. C. Brinkley, and all payable at the branch of the Union Bank, at Memphis, and with statement in face of all that it is for rent of store-house on Main street & Monroe streets, and each note for the sum of $1,250, and due, respectively, October 1st, 1862, January 1st, 1863, April 1st, 1863, July 1st, 1863, and October 1st, 1863.

And that defendant, having answered, "prays that the court, by decree at the hearing, may settle the whole matters in controversy between

complainants and himself, and a decree in his favor for the amount of said notes and interest":

269 The court is therefore pleased to order, adjudge, and decree that the said R. C. Brinkly do recover of the said S. M. Gates, A. M. Wood, and Milton McKnight, partners trading under the firm name and style of Gates, Wood and McKnight, the sum of eight thousand eight hundred and twenty-one $\frac{49}{100}$ ($8,821\frac{49}{100}$) dollars, being the amount of principal and interest of the said five notes after allowing the credits of one said of $\$23\frac{33}{100}$ and $\$127\frac{68}{100}$, and proper interest on said credits, for which let execution issue; and it is further ordered that the complainants pay the costs of this cause.

All of which is finally ordered and decreed; to all of which complainants except, and from which decree the complainants pray an ap-

270 peal to the next term of the supreme court to be holden at Jackson, which is granted, and sixty from the 23rd of November, 1870, are allowed them in which to give the bond required by law.

Appeal bond.

We, S. M. Gates, A. M. Wood, and Milton McKnight, firm of Gates, Wood and McKnight, and S. Mosby and J. D. Williams, security, acknowledge ourselves indebted to Robt. C. Brinkley in the sum of seventeen thousand six hundred and forty dollars; to be void if the said S. M. Gates, A. M. Wood, and Milton McKnight, who have prayed for and obtained an appeal from a decree of the second chancery court of Shelby County, in a cause in which S. M. Gates, A. M. Wood,

271 and McKnight, firm of Gates, Wood and McKnight, all complainants, and Robt. C. Brinkley is defendant, to the next term of the supreme court of Tennessee for the district of West Tennessee, to be held at Jackson, Madison County, on the first Monday in April next, shall abide by and perform all such orders and decrees as shall from time to time be made by the court, and shall pay whatever judgment, together with all such costs as may be awarded against them by said supreme court. This January 21st, 1871.

SAM. M. GATES. [SEAL.]
S. MOSBY. [SEAL.]
J. D. WILLIAMS. [SEAL.]

Sureties by me approved.

M. D. L. STEWART,
Clk & Master.
By GEO. MALLERY,
D. C. & M.

272 (Endorsement on appeal bond:) Filed 21st day of January, 1871. M. D. L. Stewart, cl'k & master.

Order perfecting appeal.

STATE OF TENNESSEE.

Be it remembered that at a term of the second chancery court of Shelby County, began and held at the court-house of said *court* on the 1st Monday, being the 3rd day of October, 1870:

Present and presiding, the Hon. W. L. Scott, chancellor.

MEMPHIS, *Monday, Feb'y* 6, '71.

S. M. GATES & ALS.
vs.
R. C. BRINKLEY. } 2928.

On, to wit, January 21st, 1871, came complainants, S. M. Gates, A. M. Wood, and Milton McKnight, firm of Gates, Wood & McKnight, and tendered their bond for an appeal according to law with S. Mos-
273 by and J. D. Williams as securities, which was approved and filed.

Decree of supreme court.

September term, 1875.

And at, to wit, on the 13th day of October, 1875, one of the days of said September , 1875, of the supreme court of Tennessee, at Jackson, the following decree was rendered in this cause, to wit:

S. M. GATES, A. M. WOOD, & MILTON MCKNIGHT, firm of Gates, Wood and McKnight,
vs.
R. C. BRINKLEY. } ✗ 106. Shelby ch'y *deceat.*

This cause coming on to be heard this 13th day of October, 1875, on the transcrip' of the record from the second chan'ery court of Shelby County, because it appears to the court that there was error in
274 the record, in that it charges the complainants with the note for the sum of $1,250.00, due October 1st, 1863, in the pleadings mentioned, when the said complainants ought to have been exonerated therefrom, the said decree's so far modified and reversed; and as it appears that in all things else in said decree there is no error, it is ordered that the same be in all other things affirmed.

And it appearing that the amount of the judgment in the court below, the amount on the four notes of October 1st, 1862, January 1st, 1863, April 1st, 1863, and July 1st, 1863, amounting, after giving just credits as allowed by the chancellor below, to the sum of $7,040.24, is correct, and that the amount of the other note, $1,781.25, is erroneous, it is ordered that the judgment be affirmed as to the said sum of $7,040.24 and reversed as to the sum of $1,781.25, and that the
275 defendant, R. C. Brinkley, recover of the complainants and Samuel Mosbey and J. D. Williams, their security on appeal bond, said sum of seven thousand and forty $\frac{24}{100}$ dollars and the interest thereon from the date of the decree below, amounting to the sum of two thousand one hundred and six $\frac{07}{100}$, making in all the sum of $9,146$\frac{31}{100}$, for which execution may issue.

It is further ordered by the court that defendant R. C. Brinkley pay one-half the costs of this cause in this & the court below, and that the complainants and Wm. Joyner, their security on costs bond, pay one-half the costs of the court below, and that said complainants and Samuel Mosby and J. D. Williams, their sureties on appeal bond, pay one-half the costs of this court, and that execution issue accordingly.

276 *Opinion.*

GATES, WOOD AND MCKNIGHT
vs.
R. C. BRINKLEY. }

On the 1st July, 1859, the defendant Brinkley leased to the com-

plainants a certain tenement in Memphis for the term of five years, and endorsed upon the written lease his consent that the premises might be rerented.

The annual rental was $5,000, secured by notes for $1,250 each, payable quarterly. The premises were occupied and the notes paid until some time in the year of 1862, when the city of Memphis being occupied by the United States Army, and the defendant Brinkley having left the city and gone South, the complainants and their subtenants were notified by a person who was styled a "rental agent" that the rents
277 must thereafter be paid to him. This officer was recognized and sustained by the commanding officer of the United States Army. The complainants refusing to yield to this demand, were dispo'ssed by military force. Their subtenants, or some of them, yielded to the demand and were allowed to remain in possession, paying the rents to the rental agent.

On the 11th of July, 1863, Hugh L. Brinkley, a son of the defendant, made negotiations with said rental agent, or the authorities having control of the matter, by which the possession of the premises were released to him, he at the time executing the following writing:

MEMPHIS, *July 11th*, 1863.

I hereby release all claims whatever which I have against tenants of property leased by the United States Government, and this day
278 surrendered to me, for all rents accruing to me during the time of said tenancy under the United States Government, as well as for all differences in the rate of my rents originally by lease, and the amount received by the United States, looking only to the United States for compensation, if any is hereafter allowed.

(Signed) HU. L. BRINKLEY.

The defendant R. C. Brinkley returned to Memphis in 1864 and took possession of the premises, the tenants paying rents to him from that time. He subsequently brought suit upon the unpaid notes for the rent up to the 1st Oct., 1863, and he now disclaims the rents from and after that time, and proposes to surrender and cancel the notes therefor.

The complainants thereupon file this bill to be relieved entirely
279 from the payment of the notes sued upon; or, if this relief can't be had, to obtain credit for certain improvements made upon the property.

The first question is whether or not the complainants are relieved from the payments of the rent notes during the time the property was forcibly held by the United States military. This, we think, depends upon the question whether the property was seized as Brinkley's, and the seizure was authorized by the laws of Congress or under the laws of war in such cases.

A rightful eviction by the third party claiming against the lessor ought to excuse the payment of rents; for the rents were paid in consideration of the enjoyment of the premises.

If the seizure was of the property and was illegal, then the loss must fall upon the complainants, as they were the owners of the term,
280 and it would then be simply an unlawful seizure and appropriation of their property, for which they could only look to the trespassers or to the government for redress. This principle is recognized in the case of Banks vs. White, 1 Sneed, 613.

We think it manifest that the seizure of this property was not authorized by the act of Congress in regard to abandoned property; for, as

has been said, the property belonged to the lessees for the term, and there was no pretence that it had been abandoned by them. The proof indicates that the seizure was made because Brinkley had gone South. This could upon no construction of the act of Congress justify the seizure of the property of his lessees.

But it is argued that the seizure was not of the property but of the rents due from the complainants to Brinkley, and this, it is said,
281 if not within the meaning of the act of Congress as to abandoned property, was at least justified under the general belligerent powers then being exercised by the Federal Army.

The authority relied upon to sustain this proposition we think fails to do so. In the opinion of Justice Hunt, in the case of New Orleans vs. Steamship Co., 20 Wall., he says the wharves and levees of the city of New Orleans were land and immovable property belonging to the conqu'red States. The fruits and rents were spoils of war, which belonged to the conqueror so long as he held the conquered State.

The "fruits and rents" refer'ed to were rents of the public property, and we think the case is no authority for holding that the United States Army could rightfully, under the war power, seize and confiscate
282 a debt due from one private individual to another for rent of real estate. Of course we do not deny the right of the Army to seize and appropriate whatever may be necessary for its use. Nor is it necessary to discus' the laws as to confiscation for acts of treason, for there was no proceeding of that sort.

But if the seizure can in any view be held justifiable under the war power or otherwise, still we think it clear that the seizure was not of the debt or rents due from the complainants to Brinkley, but was a seizure of the property of the complainants, that is, the houses and tenements owned by them, for the time and rents due them from their subtenants.

We suppose the seizure was made upon the idea, which we think was erroneous, that Brinkley was the ultimate owner of the property,
283 and had gone South; the property was abandoned in this sense of the act of Congress.

It is argued that as Brinkley's acts were the cause of the property being seized, the loss should fall upon him; but this does not follow, unless his acts constituted legitimate ground for the seizure. So upon this question we conclude that the possession of the premises was wrongfully taken from the complainants; but, as the defendant is not in a legal sense responsible for these acts, that the complainants cannot on this ground be relieved from the payment of the notes.

The next question is as to the effect of the release executed by Hugh L. Brinkley on the 11th July, 1863. The defendant denies that Hugh L. Brinkley was at the time his agent, or authorized to bind him in this manner, and there is no evidence to establish the agency.
284 We suppose that Hu. L. Brinkley took the responsibility of doing what he believed to be to his father's interest, influenced probably in part by the fact that he was one of the owners of the remainder after the termination of his father's life estate in the property, and on this account interested in its preservation.

But it is argued that the defendant ratified the acts of Hugh L. by accepting the benefits thereof, & must abide by the terms upon which Hu. L. Brinkley obtained the possession.

It is a recognized principle that when one party accepts the benefits

of the acts of another done in his name, that he must accept the benefits with its burdens.

Had the agreement of Hu. L. Binkley been made with the complainants, or with any one on their behalf authorized to bind them,
285 we should say that the acceptance by the defendant of the possession thus obtained would be a ratification of the terms agreed upon.

But the complainants were themselves no party to the agreement between the rental agent and Hu. L. Brinkley of the 11th July, 1863, and were not bound thereby, and we do not see that they can claim the benefits of its stipulations, as there was no mutuality.

The agreement between the rental agent and Hugh L. Brinkley did not give the latter or the defendant the right to seek compensation from the Government of the United States for the rents during the time the property was held. This right belonged to the complainants, and they were not parties to the agreement transfer'ing this right to Brinkley. As they were not bound by this contract they could not claim its
286 benefits, and besides upon the assumption that the rental agent was a trespasser, without color of right, any stipulation exacted by him in behalf of another for whom he was not authorized to act would not be obligatory. The rental agent was in possession, as we hold, without rightful authority. The right of possession was in complainants Gates, Wood and McKnight, subject to the right of the defendant to re enter according to the terms of the lease.

In this attitude the rental agent agrees to surrender the possession to a third party, Hu. L. Brinkley, upon his agreement to release the complainants from any rents due from them under the original lease.

This agreement Hu. L. Brinkley made in his own name, but it may be inferred that he was in fact taking the responsibility to act for the
287 def't, his father. Now, as we have said, the defendant in 1864 takes possession and voluntarily agrees to look to Hu. L. Brinkley and the tenants for the rent after October 1st, 1863, or at least releases the complainants from rent after that time. Is he by this act bound to ratify the act of Hu. L. Brinkley, in releasing the complainants of the rents due for the time the possession was wrongfully withheld by the military? We are unable to see that he is.

The lease contains a stipulation that upon failure to pay the rent notes at maturity, and for ten days thereafter, the lessor might re-enter without either demanding the payment or the possession; in case of such re-entry, all installments for rent after the next pay-day to be released.
288 The defendant's reoccupation of the premises would be justifiable under this clause, as by its express terms no demand either of payment or possession or notice was necessary unless the complainants were prevented from making payments by the fact that the defendant was absent from Memphis, leaving no agent to whom the payment might be made. No issue is made in the pleadings as to whether the defendant had any such agent to receive payment or not.

The complainants do not aver their re'diness to pay the notes at maturity. Nor does the defendant in terms justify his re-entry upon the ground of the failure to pay, but upon the ground that he found parties in possession, not claiming under the complainants, who, he says, had abandoned the premises, and he therefore determined to take
289 possession and release the complainants from rents after next pay-day. We see no reason to suppose that the complainants were prevented from paying by the absent of defendant, but, on the contrary, it appears that they denied their liability altogether.

It is insisted in argument that as the defendant Brinkly re-entered by collusion with a trespasser or wronger who had evicted the complainants, that this re-entry made him responsible for the eviction, and complainants are therefore released from rents.

This general proposition, as applied to the facts of some cases, is perhaps sustained, but it will perhaps be found that the question of intention upon the part of the lessor re-entering is important. We think there was no collusion in fact between the defendant and the
290 wrongdoers in this case, nor no purpose upon his part to deprive the complainants of their lease; on the contrary, they had lost possession by the wrongful acts of other parties, and the purpose of the defendant in re-entering was not to deprive the complainants of their term, which they were not in fact attempting to regain so far as appears, but it was to release the complainants by this means for the rent for the balance of the term.

Otherwise, had the possession remained with the rental agent, complainants might have been liable for the entire rents. In this view the re-entry was for the benefit of the complainants, and in this view, we think the rule insisted upon should not apply; aside from the right of defendant to re-enter for non-payment of the rent notes as stipulated by the lease.

291 Upon both grounds the re-entry was justifiable.

Upon the question of the right of the complainants to compensation for improvements, their versions is that these improvements were placed on the premises in view of a lease for ten years, or a renewal of the lease for another term of five years, in which event it is conceded they were to have no compensation; but one of the complainants in his testimony says, that the impression was left upon his mind that in the event the lease was not renewed, they would get compensation. This is directly denied by the defendant, both in his answer and his testimony, and he states that the whole contract was reduced to writing as was his custom. This being the whole of the proof, it is clear the complainants' case on this ground must fail, and they can be allowed nothing for improvements beyond what is allowed by the chancellor's decree.

292 The chancellor's decree in its general aspect must therefore be affirmed.

We think, however, that complainants should be relieved from rents after the 11th July, 1863. The defendant Brinkly proposes to release and surrender all the notes after the one falling due October, 1863, but he claims the note falling due at that date, which, as we understood, is for the rent for the three preceeding months. This is according to the stipulation of the lease in regard to re-entry for non-payment of rents, the rents after the next day being thereby released.

But we are satisfied that the defendant received the rents from the 11th July, 1863, and he released Wiggin, another tenant similarly situated, to this extent. While this is not conclusive in the present case
293 it is equitable, and the decree will be accordingly. The case seems to us to be one of hardship upon the complainants, but we can grant no relief beyond what we have indicated.

The costs of this and the court below will be paid one-half by each party.

McFARLAND,
Judge.

294

295 The State of Tennessee to the sheriff of Shelby County, greeting:

You are hereby commanded that of the goods and chattels, lands and tenements of S. M. Gates, A. M. Wood, and Milton McKnight, firm of Gates, Wood & McKnight, and Wm. Joyner, surety on cost bond, if to be found in your county, you cause to be made the sum of fifty-nine dollars and seventy-nine ½ cents cost, the fees hereon endorsed, which R. C. Binkley lately, in our supreme court at Jackson, recovered against said Gates, Wood & McKnight, & surety, for cost, whereof they are convict and liable, as appears to us of record, and have you the same before the said court on the second Monday in March next, ready to render to the parties entitled thereto. Herein fail not, and have you then and there this writ, and make your return how you have executed the same.

Witness John H. Freeman, clerk of said supreme court, at office in Jackson, the second Monday in September, 1875.

JNO. H. FREEMAN, *Clerk*,
By S. D. HAYS, *D. C.*

Judgment the 13th day of October, 1875, for ½, cost chanc'y court.

Bill of cost.

State tax in court below, $; State tax in supreme court, $5.00.

Clerk supreme court.

Order retaxing cost, 25 cts.; entering supreme court cost on execution docket, 50 cts.; entering cost inferior court on execution docket, 50 cts.; endorsing supreme court cost on execution, 25 cts.; endorsing inferior court cost on execution, 25 cts.; enrolling fee, $; order, cts.; certiorari, cts.; order, cts.; sci. fa., cts.; filing petition, cts.; writs of error and supersedeas, ; taking and filing bond, cts.; motion, ; entering, ; filing petition to rehear, cts.; order dismissing, cts.; filing additional record, cts.; rules, cts.; order for execution fi. fa., 40, alias fi. fa., and copy cost, cts.; postage, cts.; entries, 10 cts.; pluries, fi. fa., and copy cost, cts..... 2 18 — 2 18

State, county tax, 7.50..... 7 50

In the 2 s. c. chancery court of Shelby County.

C. & M.

Filing bill, 25 cts.; aff., 25; affidavit, ; bonds, 3.50; registering bonds, ; subpœna to answer, 75 cts.; copies of bill, $4.75; filing, bill, cts.; affidavit, cts.; bond, ; copy, $, alias subpœna to answer, ; attachment, $; bond, ; injunction, $1.00; bond, ; filing, ; returns, $1.25; filing answers, 25; aff., 25; affidavit, ; notices to counsel, ; affidavits, ; orders pro con., ; orders publication, cts.; copy, ; proof, ; interlocutory orders and decrees, 1.25; entering, ; entries, 75; subpœna for witnesses, 30; taking depositions, $10.00; filing, 2.25 cts.; postage, 4 cts.; filing exceptions, ; reports stating accounts, &c., ; filing reports, ; notices, 50; affidavits, ; filing papers, ; filing exhibits, ; filing demurrer, 25; judgment on demurrer, ; filing agreements, ; order appointing guardian ad litem, ; filing answer, ; affidavit, ; entries on rules, ; report of sale, $; filing ; commissions on sale, $; setting on hearing, ; continuance, ; motions, ; judgment, ; decree final, cts.; bill of cost and copy, 75 cts.; appeal and bond, cts.; filing and registering ; transcript and seal, $77.75; copies order, 1.25... 107 34

Penalty on demurrer, $3.00, due compl't..... 3 00

SHERIFF'S FEES.

Executing inj., $1.00; spa. to test, 75..... 1 75

¼) 119 59

59 79½ — 59 79½

$61 97½

296 *Statement.*

Clerk supreme court	$2 18
½ State tax	2 50
Total due supreme court	$4 68

Received the 15th May, 1876, cost court below, $57.29.

R. J. BLACK, *D. Clerk.*

Sheriff will pay cost of court below to the clerk thereof, taking his receipt on this fi. fa. for same, and remit amount due supreme court to me.

JNO. H. FREEMAN, *Clerk,*
By S. D. HAYS, *D. C.*

(Indorsed:) No. 2956. E. D., No. 7, page 240; M. B., No. 8, page 418. In supreme court. R. C. Brinkley vs. Gates, Wood & McKnight. Fieri facias. Issued 24th day of Dec., 1875. Judgment 13th day of Oct., 1875, for $8½ costs; interest, $; costs, $61.97½; commissions, $2.50; total $64.47½. Jno. H. Freeman, clerk, by S. D. Hays, dep. clerk.

Satisfied in full April 5th, 1876, by Wm. Joyner, surety.

C. L. ANDERSON,
Sheriff Shelby Co.,
By W. D. CANNON, *D. S. S. C.*

297 The State of Tennessee to the sheriff of Shelby County, greeting:

You are hereby commanded that of the goods and chattels, lands and tenements of S. M. Gates, A. M. Wood, and Milton McKnight, firm of Gates, Wood & McKnight, and Samuel Mosby and J. D. Williams, sureties on appeal bond, if to be found in your county, you cause to be made the sum of nine thousand one hundred and forty-six dollars and thirty-one cents, together with forty-seven dollars and forty-seven cents, costs, the fees hereon endorsed, which R. C. Brinkley lately, in our supreme court at Jackson, recovered against said Gates, Wood & McKnight, & sureties, for debt, damages, and cost, whereof they are convict and liable, as appears to us of record, and have you the same before the said court on the second Monday in March next, ready to render to the parties entitled thereto. Herein fail not, and have you then and there this writ, and make your return how you have executed the same.

Witness John H. Freeman, clerk of said supreme court, at office in Jackson, the second Monday in September, 1875.

JNO. H. FREEMAN, *Clerk,*
By S. D. HAYS, *D. C.*

Judgment the 13th day of October, 1875, for $9,146.31 & ½ (half) cost sup. ct.

Bill of cost.

State tax in court below, $; State tax in supreme court, $5.00..... 5 00

Clerk supreme court.

Filing record, 75 cts.; entering on trial docket, 20 cts.; entering on six judges' dockets, 60 cts.; redocketing 6 times, 480 cts.; 6 continuances, 150 cts.; order retaxing cost, 25 cts.; decree, 100 cts.; judgment against surety, 25 cts.; entering supreme court cost on execution docket, 50 cts.; entering cost inferior court on execution docket, 50 cts.; endorsing supreme court cost on execution, 25 cts.; endorsing inferior court cost on execution, 25 cts.; correcting bill of cost of inferior court, 25 cts.; enrolling fee, $78.25; order, cts.; certiorari, cts.; order, cts.; sci. fa. cts.; filing petition, cts.; writs of error and supersedeas, ; taking and filing bond, cts.; motion, ; entering, ; filing petition to rehear, cts.; order dismissing, cts.; filing additional record, cts.; rules, cts.; order for execution fi. fa., 40, alias fi. fa., and copy cost, cts.; postage, 9 cts.; entries, 10 cts.; pluries, fi. fa., and copy cost, cts..... 89 94

½ 194 94

County tax.

In the court of county.

C. & M.

Filing bill, 25 cts.; affidavit, ; bonds, ; registering bonds, ; subpœna to answer, 75 cts.; copies of bill, $; filing, bill, cts.; affidavit, cts.; bond, ; copy, $; alias subpœna to answer, ; attachment, $; bond, ; injunction, $; bond, ; filing, ; returns, ; filing answers, ; affidavit, ; notices to counsel, ; affidavits, ; orders pro con., ; orders publication, cts.; copy, ; proof, ; interlocutory orders and decrees, ; entering, ; subpœna for witnesses, ; taking depositions, $; filing, cts.; postage, cts.; filing exceptions, ; reports stating accounts, &c., ; filing reports, ; notices affidavits ; filing papers filing exhibits ; filing demurrer, ; judgment on demurrer, ; filing agreements, ; order appointing guardian ad litem ; filing answer ; affidavit ; entries on rules ; report of sale, $; filing ; commissions on sale, $; setting on hearing ; continuance ; motions ; judgment ; decree final cts ; bill of cost and copy, 75 cts.; appeal and bond, 75 cts.; filing and registering ; transcript and seal, $.

SHERIFF'S FEES.

298 Credit this execution as of 8th of Dec,, 1875, by $2,405.21, net proceeds of land sold by Tam. Gale, trustee for Gates and for Wood.

Collect balance of judgment, $6,824.84, and costs, $47.46, from Gates, Wood & McKnight, or one-half, say $3,436.15, with interest from 8th Dec., 1875, from J. D. Williams, one of the sureties, all for benefit of S. Masley, assignee of with judgment.

HARRIS, McKISIELL & TURLEY,
Attorneys.

January 8th, 1876. No property of the within def'ts, Gates, Wood & McKnight, and J. D. Williams, to be found in my county. I have this day served this execution by garnishment on Jayner, Lemon & Gale, and Thos. Gale. Returnable to the supreme court, at Jackson, Tenn., on the second Monday in March, 1876, copys of which is hereto attached and made part of this return.

C. L. ANDERSON, *Sheriff*,
By W. W. COLEMAN,
D. Sheriff Shelby County, Tenn.

(Indorsed:) No. 2954. E. D., No. 7, page 239; M. B., No. 8, page 418. In supreme court. R. C. Brinkley vs. Gates, Wood & McKnight

& al. Fieri facias. Issued 24th day of Dec., 1875. Judgment 13th day of Oct., 1875, for $9,146.31; interest, $47.47; costs $; commissions, $; total, . Jno. H. Freeman, clerk, by S. D. Hays, dep. clerk.

1875, Nov. 6th, rec'd of H. E. Jackson the costs, 47.47.

S. D. HAYS, *D. C.*

Came to hand Jan'y 8, 1871.

HEISKELL, SCOTT & HEISKELL,
Attorneys.

299 THE STATE OF TENNESSEE:

I, John H. Freeman, clerk of the supreme court of said State for the western division, at Jackson, certify that the foregoing is a full, true, and perfect transcript of the record in the case of Gates, Wood, & McKnight against R. C. Brinkley, as the same appears of record and on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the court, at office in the city of Jackson, on this 6th day of November, 1876, and of the Independence of the United States the 101st year.

[SEAL.] JNO. H. FREEMAN, *Clerk.*

300 To the honorable Jas. W. Deaderick, chief justice of the supreme court of Tennessee.

The petition of Samuel Gates, Albert M. Wood, and Milton McKnight, firm of Gates, Wood, and McKnight, and their sureties, J. S. Williams and Samuel Mosby, in the case of S. M. Gates et als. vs. R. C. Brinkley.

Your petitioners would respectfully represent unto your honor that lately, in the supreme court of Tennessee, there was pending a cause wherein your petitioners, Gates, Wood & McKnight, were complainants, and R. C. Brinkley was defendant, in which a final decree was rendered in said supreme court at the September term, 1875, of said court, against the complainants and their sureties, your petitioners, and in favor of the defendant in said cause. They further represent to your honor that in the said cause and proceeding there was drawn in question one of the matters described in the 25th section of the judiciary act of the United States, viz, an authority exercised under the United States, and the decision is against its validity, or where a title, right, privilege, or immunity is claimed under an authority exercised under the
301 United States, and the decision is against the title, right, privilege, or immunity specially set up or claimed by complainants under such authority.

Your petitioners claimed that the effect of the seizure of the property as abandoned property by the United States military authorities was to deprive the lessee, Gates, Wood and McKnight, of all rights of possession or occupancy under their lessor, R. C. Brinkley, and they are exempt by reason thereof from any further demand for rents during the time so held by the United States military authorities, viz, from the day of , 1862, to the 11th of July, 1863; and he, the said Brinkley, having left the jurisdiction, his property was seized as abandoned property, and the effect of the seizure was to deprive the lessees of all right of possession or occupancy, and they were obliged to leave the premises by the said lawful authorities under the United States, exercised and canceled the obligation between the lessor and lessees, and the lessor

having failed to keep lessee in quiet and peaceable possession, as was his covenant, the lessees were released for the time the property was so held, the said authority being a lawful one, exercised under the United States.

302 But, decision of the supreme court was adverse to the right, privilege, immunity, title claimed by petitioners, and the said authority was pronounced wrongful and illegal, and a decree entered adjudging the same, and charging the complainants with the rents for the time said property was so held by the said military authorities, acting under the authority of the United States.

Your petitioners therefore pray your honor to endorse an allowance of a writ of error, and that the proper citation be signed by your honor, to the end that the record and proceedings in said cause may be removed into the Supreme Court of the United States, to the end that said error may be corrected.

And your petitioners, as in duty bound, will ever pray.

GATES, WOOD & McKNIGHT ET AL.,
By LUKE W. FINLAY, *Solicitor.*

STATE OF TENNESSEE, *Jackson:*

The writ of error prayed for in the within petition is granted and allowed in pursuance of the law in such cases.

JAS. M. DEADERICK,
Chief Justice of the Supreme Court of the State of Tennessee.

(Indorsed:) Gates, Wood & McKnight v. R. C. Brinkley. Petition. Filed Oct. 30, 1876. Jno. H. Freeman, cl'k.

303 UNITED STATES OF AMERICA:

The President of the United States to the honorable judges of the supreme court of the State of Tennessee, sitting at Jackson, for the western division of the State of Tennessee, greeting:

Because in the records and proceedings, as also in the rendition of the judgment or decree of a plea which is in the said supreme court of the State of Tennessee, sitting at Jackson for the western division of the State of Tennessee, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in said suit, between S. M. Gates, A. M. Wood, and M. McKnight, firm of Gates, Wood and McKnight, complainants, vs. R. C. Brinkley, defendant, wherein was drawn in question an authority exercised under the the United States, or where a title, right, or privilege, or immunity is claimed under the authority of the United States, specially set up or claimed by complainant, and the decision was against the validity of such authority of the United States, or against the title, right, privilege, or immunity specially set up or claimed under such

304 authority, a manifest error hath happened to the great damage of the said Gates, Wood, and McKnight and their sureties, in said cause, as by their said complaint appears. We, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same

at Washington on the 2nd Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the (30th day) 2nd Monday of *of* October, in the year of our Lord one thousand eight hundred and seventy-six.

[SEAL.] H. E. ANDREWS,
Clerk of the U. S. Circuit Court for the District of West Tennessee

JACKSON, *Tenn., Oct. 30th*, 1876.

305 The above writ of error is allowed.

JAS. W. DEADERICK,
Chief Justice Supreme Court Tenn.

(Indorsed:) Gates, Wood & McKnight v. R. C. Brinkley. Writ of error. Filed Oct. 30, 1876. Jno. H. Freeman, c'k.

306 The United States of America to R. C. Brinkley, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the second Monday in October next, pursuant to a writ of error filed in the clerk's office of the supreme court of Tennessee, wherein S. M. Gates & others are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the decree rendered against the said plaintiffs in error, as in the said writ mentioned, should not be corrected, & why speedy justice should not be done to the parties in that behalf.

Witness the honorable James W. Deaderick, chief justice of the supreme court of Tennessee, this 30th day of October, 1876, A. D.

JAS. W. DEADERICK,
Chief Justice Supreme Court of Tennessee.

Service acknowledged for R. C. Brinkley, def't in error.
J. B. HEISKELL, *Att'y.*

307 Service acknowledged by J. B. Heiskell, solicitor for R. C. Brinkley, in my presence, November 15th, 1876.
JNO. H. FREEMAN, *Clk.*

308 STATE OF TENNESSEE,
County of Shelby, ss:

Personally appeared before me, Horace E. Andrews, clerk of the circuit court of the United States for the western district of the State of Tennessee, Wm. Hunter, who made oath in due form of law that he served the foregoing citation in the case of S. M. Gates, A. M. Wood & Milton McKnight, firm of Gates, Wood & McKnight, are plaintiffs in error, and R. C. Brinkley, defendant in error, pursuant to the writ of error to the Supreme Court in said citation mentioned, returnable to the 2nd Monday in October next (1877), on the said defendant in error, R. C. Brinkley, on this the 3rd day of November, 1876, and left with him a copy thereof on the same day. This the 3rd day of November, 1878.

WM. HUNTER.

Subscribed and sworn to before me this 7th day of November, 1876.
H. E. ANDREWS,
Clerk U. S. Circ't C't W. D. T.

(Indorsed:) Filed Nov. 9th, 1876. Jno. H. Freeman, cl'k.

(Indorsed:) Gates, Wood & McKnight, v. R. C. Brinkley. Citation. Filed Oct. 30th, 1876. Jno. H. Freeman, cl'k.

67

(Indorsement on cover:) No. 323. S. M. Gates, A. M. Wood, and M. McKnight, as Gates, Wood & McKnight, plaintiffs in error, vs. R. C. Brinkley. Tennessee sup. court. Filed 16th January, 1877.

PHILADELPHIA
BAR
ASSOCIATION

IN UNITED STATES SUPREME COURT,

OCTOBER TERM, 1879.

S. M. GATES, Et Als.,

vs.

R. C. BRINKLEY.

BRIEF OF PLTFFS. IN ERROR ON MOTION TO DISMISS.

I.

The firm of Gates, Wood & McKnight are not Bankrupts. But Defendant in Error claims two members of that firm are. S. Mosby is not assignee of Deft. The record is not his work. The Receipt and instructions (Record, page 70,) endorsed on execution are those of Defts. att'ys.

The adjudication of Bankruptcy of one partner in his own behalf, and as a member of the firm, does not pass the partnership effects to his assignee.

In Re. Paulson, 1 N. Y. Leg. Obs. 6.
Murray vs Murray, 5 Johns. Chy. 60.
Tallcott vs Dudley, 4 Scram. Ill. 427.
Parker vs Muggrudge, 2 Story, 334.
In Re. Shepard, 3 B. Reg., 172.
Forsaith vs Merritt, 3 B. Reg., 48.
Withrow vs Foster, 7 B. Reg., 339.
Amsink vs Bean, 11 B. Reg., 495.

{ IX Wall 664 XII
{ Wall 379 do not
{ apply. Firm no
{ individual part-
{ ners as a firm
{ or members, not
{ Bankrupt.

II.

Purchaser may sue in name of Bankrupt.

Foster vs Wylie, 60 Me. 109.

III.

Until the assignee is appointed, qualified, and assignment made, title remains in Bankrupt.

Sutherland vs Davis, 42 Ind. 26.

IV.

Assignment in Bankruptcy does not pass trust estate, but only such as the Bankrupt had an equitable, as well as legal estate in.

Valentine vs Holloman, 63 N. C. 475.

V.

Defendant is not interested in this matter, and whether the assignee prosecutes the suit in his own name after the Bankruptcy, or uses the name of the Bankrupt, the deft. can not be heard to complain.

King vs Morrison, 5 Ark. 492.
Hynson vs Burton, 5 Ark. 519.
Woodall vs Holliday, 10 B. Reg. 545.

VI.

Appeal may be prosecuted, after Bankruptcy, in name of Bankrupt or assignee.

Reade vs Waterhouse, 10 B. Reg. 277.
O'Neill vs Dougherty, 46 Cal. 575: 10 B. Reg. 294.
Riggs vs White, 4 Heisk. Tenn. 403.

And even though this be by writ of error.

Longley vs Swayne, 4 Heisk. Tenn, 506 note.

LUKE W. FINLAY,
For Plaintiffs in Error.

In United States Supreme Court,

OCTOBER TERM, 1879.

S. M. GATES, Et. Als., Appellants.

vs.

R. C. BRINKLEY.

ASSIGNMENT OF ERRORS.

I. It was error in State Court to hold—

That the seizure of the leased premises was wholly unauthorized, illegal, and the persons participating therein (the United States military authorities) were "tort feasor."

II. It was error in the State Court to hold—

that the United States military authorities could not rightfully, under the war power, seize and appropriate the rents due from one private individual to another in a belligerent State.

III. It was error in the State Court to hold—

That the seizure of the leased premises, and the eviction therefrom of the tenant, by the United States military authorities—the landlord having abandoned the jurisdiction, and having failed to keep the tenant in peaceable possession, did not dissolve the relation, did not discharge the tenant

from all liability to pay the rents during such seizure and occupation; and that such seizure, eviction and occupation constituted no defense on the part of the tenant to an action for the payment of the rent notes.

BRIEF FOR APPELLANTS.

I. This Court has jurisdiction. U. S. Rev. S., Section 709.

II. The failure on the part of the landlord to keep the tenant in the peaceable possession and quiet enjoyment of the premises is a good defense to an action of rent.

Parsons on Contracts, Vol. 1, p. 500.

Cons. Tenn., 1834 and 1870.

III. The United States military authorities, under the war power, may rightfully seize and appropriate rents and moneys due from one private individual to another.

1. Young vs. United States, 97 U. S. 39.
2. Smith vs. Brazelton, 1 Heisk. (Tenn.) 44.
3. Cummings vs. Diggs, 1 Heisk. (Tenn.) 67.
4. Kent Com., Vol. 1, 110.
5. Mrs. Alexander's cotton. 2 Wall, 404.
6. United States vs. Padelford. 9 Wall, 531.
7. New Orleans vs. Steamship Co. 20 Wall, 387.
8. Lamar, Exr., vs. Brown. 92 U. S., 187.

IV. The seizure of the leased premises, eviction of the tenant therefrom, and occupation thereof by the United States military, the landlord being a belligerent citizen, having *abandoned* the jurisdiction, and having failed to keep the tenant in peaceable possession and quiet enjoyment, discharges the tenant from the payment of all rent during the period of such seizure and occupation.

Harrison vs. Myer, Exr. 92 U. S., 111.

Certain tenements in Memphis, Tenn., described in the record, were in June, 1859, leased by appellee Brinkley to appellants, for and during the full term of five years, to begin on the 1st day of July, 1859, and to terminate at the end of

five years from the commencement of the term, and in consideration thereof the lessee covenanted and agreed to pay to the lessor the annual rent of $5000, payable in quarterly installments at the end of every quarter.

Quarterly payments were made punctually until the Federal occupation in June, 1862, when lessees ceased to make the payments. Lessees went into possession and remained until the Federal occupation in June, 1862, when the premises were seized by the military authorities of the United States as abandoned property, and the lessees were evicted by reason of the abandonment of the jurisdiction by the lessor. After the close of the war the lessor sues for the rents during the Federal occupation, which continued until July 11, 1863, when the premises were turned over to the lessor's son under the instrument set out on page 15 of the record.

We still are of opinion that the son was the agent, or that the taking possession of the premises by the lessor, under the circumstances, was a *ratification* of his act, though the State Court held differently.

It will be seen that the record presents the precise state of facts as stated in Harrison vs. Myer, Exr., supra, in the 2d defense therein relied upon, with the single exception that in that case the tenant attorned to the military authorities, but in this was evicted by reason of the lessor's acts, and lessees' sub-tenants required to attorn to the U. S. military authorities; and the rents were appropriated and paid for the support of the war, under the orders of General W. T. Sherman and others.

1. The authority, whose act is called in question, and which was held by the State Court, unauthorized, illegal and "tort feasor," was the military authority of the United States, and the decision was *against* its validity. This is clearly within the law. This Court has jurisdiction.

On the second point it will appear there was an eviction by a lawful authority, and the landlord abandoned the jurisdiction, and *failed* to keep the lessees in peaceable possession.

This was a violation of his covenant. In Tennessee the common law rule obtains. There has been no statute changing the rule. See Section 1, Article XI, Cons. Tennessee, 1870, and also other constitutions. The common law rule prevails. The lessor has broken his covenant.

Parsons on Contracts, Vol. 1, 500.

The distinctions taken by some, as to the power of the United States military authorities in enemy's States, or belligerent States, it seems to us, are not well taken. It is said that this power over *public* property of the belligerent State is absolute, but over private property not absolute, but qualified. Hence they conclude that the fruits and rents of conquered States, such as that of the *public wharves* and *levees* are liable to seizure, and are spoils of war. But it is insisted that these fruits and rents were of public property. We submit the case relied on to support this proposition makes no such distinction. New Orleans vs. Steamship Co., 20 Wall, is no authority for holding that the United States military could not rightfully, under the war power, seize and confiscate rents falling due from one private individual resident of the conquered jurisdiction, to another who had abandoned that jurisdiction and was within the enemy's lines. The argument is, you can seize the horse, or cow, or corn of the belligerent, if needed for the support of the war, but you cannot take the money or rents due the belligerent, even for the support of the war. They misconceive the war power. It can take private property to weaken and cripple the enemy. It can do this though not needing it. In that case the Court made no such qualification. The Court says the conquering power "may appoint all the necessary officers, "and clothe them with designated powers, large or smaller, "according to its pleasure. It may prescribe the revenues to "be paid, and apply them to its own use or otherwise. It "may do anything necessary to strengthen itself and weaken "the enemy. *There* is *no limit* to the powers that may be "exerted in such cases, save those which are found in the "laws and usages of war."

But the power is absolute. The military authorities may not exercise it. It may not disturb any private property. It may designate, in large cities, where belligerents have abandoned the jurisdiction, as in Memphis and others, that all such abandoned houses may be seized and rented. It may weaken in this way, very greatly, the enemy. It may supply its own necessities. The United States military authorities in these cases did both. They had the power. They were the supreme law. No belligerent could question this. The cases cited abundantly sustain the proposition. The circumstances of the case, the exigencies of the time, are before the military authority. It may cripple the enemy. It may weaken his power. It may supply its own necessities. It may seize and appropriate the rents of real estate, and thus prevent the same from being sent or taken within the enemy's lines. This doctrine is so clearly enunciated in the cases cited above that we need say no more. It is the clearly recognized principle in Young vs. United States, 97 U. S. Supra. This brings us to the main question. What is the effect of such seizure, eviction and occupation? It is apparent that the right of the captor is absolute. The military authority seizes a horse, or cow, or sheep. The title of the belligerent passes at once. Likewise does the right to the rents. The abandoned houses have been seized. The tenant is required to make a new contract, or to leave the premises. The authority is lawful. The covenant is broken by the failure of the landlord to keep the tenant in peaceable possession. He has abandoned the jurisdiction. He cannot evade the capture of his rents by staying within the enemy's lines. This is not the case of a suit between the lessees and the assignee of the rent notes. It is between the lessees and the lessor. At the time of the seizure the lessor was the party to whom the rents were payable. He had abandoned the jurisdiction. He had failed to keep the lessees in peaceable possession. His presence and performance of his covenant would have secured the lessees from eviction. The statement of the proposition in Harrison vs. Myer, Exr., supra, is the true rule.

The seizure by the paramount authority of the government, the landlord having abandoned the jurisdiction, is good defense, and releases the tenant from the rent notes.

The money having been paid below, and the judgment having been executed, because of no supersedeas, we ask a *reversal* and remand of the cause for further proceedings in the State Court.

LUKE W. FINLAY,

B. M. Estes For Appellants.

Supreme Court of the United States.

No. 96.

GATES, WOOD ET AL.

vs.

BRINKLEY.

On motion to dismiss.

PROOFS OF BANKRUPTCY.

UNITED STATES OF AMERICA,
District Court of the U. S., Western District of Tenn.

Whereas A. M. Wood, of Shelby county, Tennessee, has been duly adjudged a bankrupt under the acts of Congress establishing a uniform system of bankruptcy throughout the United States, and appears to have conformed to all the requirements of law in that behalf, it is therefore ordered by the court that said A. M. Wood be forever discharged from all debts and claims which by said acts are made provable against his estate, and which existed on the 22d day of April, 1876, on which day the petition for adjudication was filed by him, excepting such debts, if any, as are by said act excepted from the operation of a discharge in bankruptcy.

Given under my hand and the seal of the court at Memphis, in said district, this 1st day of August A. D. 1876.

[L. S.] CONNALLY F. TRIGG, *Judge.*

UNITED STATES OF AMERICA,
District Court of the U. S., Western District of Tenn.

Whereas W. M. Brooks, of Shelby county, Tennessee, has been duly adjudged a bankrupt under the acts of Congress establishing a uniform system of bankruptcy throughout the United States, and appears to have conformed to

all the requirements of law in that behalf, it is therefore ordered by the court that said W. M. Brooks be forever discharged from all debts and claims which by said acts are made provable against his estate, and which existed on the 22d day of April, 1876, on which day the petition for adjudication was filed by him, excepting such debts, if any, as are by said act excepted from the operation of a discharge in bankruptcy.

Given under my hand and the seal of the court at Memphis, in said district, this 1st day of August, A. D. 1876.

[L. S.] CONNALLY F. TRIGG, *Judge.*

UNITED STATES OF AMERICA,
District Court of the U. S., Western District of Tenn.

Whereas S. M. Gates, of Shelby county, Tennessee, has been duly adjudged a bankrupt under the acts of Congress establishing a uniform system of bankruptcy throughout the United States, and appears to have conformed to all the requirements of law in that behalf, it is therefore ordered by the court that said S. M. Gates be forever discharged from all debts and claims which by said acts are made provable against his estate, and which existed on the 22d day of April, 1876, on which day the petition for adjudication was filed by him, excepting such debts, if any, as are by said act excepted from the operation of a discharge in bankruptcy.

Given under my hand and the seal of the court at Memphis, in said district, this 1st day of August, A. D. 1876.

[L. S.] CONNALLY F. TRIGG, *Judge.*

Assignment of Bankrupt's Effects.

In the District Court of the United States for the Western District of Tennessee.

In the matter of Samuel M. Gates, Albert M. Wood, and W. M. Brooks, partners as Gates & Wood, and Gates, Wood & Co., bankrupts. } In bankruptcy.

Western District of Tennessee, *ss:*

Know all men by these presents, that Oscar Wooldridge, of the city of Memphis, in the county of Shelby and State

of Tennessee, in said district, has been duly appointed assignee in said matter:

Now, therefore, I, I. J. Latham, register in bankruptcy, by virtue of the authority vested in me by the fourteenth section of an act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, do hereby convey and assign to the said Oscar Wooldridge, assignee, as aforesaid, all the estate, real and personal, of the said Gates, Woods & Brooks, bankrupt, aforesaid, including all the property of whatever kind of which he is possessed or in which he was interested or entitled to have on the 22d day of April, A. D. 1876, with all his deeds, books, and papers relating thereto, excepting such property as is exempted from the operation of this assignment by the provisions of said fourteenth section of said act.

To have and to hold all the foregoing premises to the said Oscar Wooldridge and his heirs forever, in trust, nevertheless, for the use and purposes, with the powers and subject to the conditions and limitations set forth in said act.

In witness whereof, I, the said I. J. Latham, register in bankruptcy, have hereunto set my hand, 18th day of May, A. D. 1876.

[L. S.] I. J. LATHAM,
Register in Bankruptcy.

UNITED STATES OF AMERICA,
Sixth Circuit and District of West Tennessee.

I, Horace E. Andrews, clerk of the District Court of the United States for said District of West Tennessee, do hereby certify that the paper hereto attached is a full, true, perfect, and correct copy of the original deed of assignment and discharges in bankruptcy in said court as the same now appear of record and upon the files in my office, in the following cause, to wit: In the matter of Gates, Woods & Brooks, No. 1420.

In testimony whereof, I have hereunto set my name and affixed the seal of said court, at office in the city of Memphis, this 24th day of November, A. D. 1879, and of the independence of the United States the 104th year.

[L. S.] HORACE E. ANDREWS,
Clerk.

In the Supreme Court of the United States.—October Term, 1879.

S. M. Gates, A. M. Wood, and others
vs.
R. C. Brinkley.
No. 96.

Marcus J. Wright, a temporary resident of the District of Columbia, at the instance of the counsel for the defendant in error in the above-named case, makes oath, that for many years he has been acquainted with S. M. Gates and A. M. Wood of the city of Memphis; that previous to the war and when he first knew them they were doing business together under the name of Gates & Wood. Later, and when the war broke out, they were associated with Milton McKnight, and were doing business in the block known as the Brinkley block, on Main and Monroe streets, Memphis, and after the war they continued business together, with perhaps a new partner, under the name of Gates, Wood & Co. They afterwards went into bankruptcy in or about the year 1876, and were said to have been discharged. The said S. M. Gates and A. M. Wood were the only persons of that name doing business in the city of Memphis within the periods above named, and the only persons of that name known to affiant, though affiant's means of knowledge of persons in Memphis was very extensive from a long residence in that city, and from being clerk of an important court and sheriff of the county, and from active participation in popular elections; and affiant verily believes that if there were any other persons or firm of the same name he would certainly have known the same.

MARCUS J. WRIGHT.

Sworn to and subscribed before me this 1st day of December, 1879.

FRED. G. CALVERT,
Notary Public.

[L. S.]

IN THE

Supreme Court of the United States

S. M. GATES, A. M. WOOD AND M. McKNIGHT,
J. D. WILLIAMS AND S. MOSBY,
vs.
R. C. BRINKLEY.

BRIEF OF J. B. HEISKELL,

FOR DEFENDANT IN ERROR.

The executor of Brinkley moves the Court to dismiss this writ of error for the reason that at the time the same was taken, Gates & Wood were certificated bankrupts. They filed their petition 22d April, 1876, and were discharged August 1, 1876. The effect of the bankruptcy, and the appointment of the assignee, under the bankrupt law, is to vest in the assignee all the *choses in action* and other property of the bankrupts. He was appointed and the assignment made, May 18, 1876. Writ of error Nov 3. 1876 This court met Oct. 13 1877.
Act of 1867, *s.* 13; *General Clause* 52. Decree below. " " 73

A right to reverse a judgment against them is a chose in action which passes by act of law, and the bankrupts have no interest, whatever, in the matter at the time they bring their suit. The assignee cannot be bound by a judgment to which they are the parties. 91. U.S. 242. 94 US. 22.

Gates & Wood are discharged from this judgment and can have no benefit, whatever, from a reversal as to so much of the judgment as remains unpaid. As to what has been paid by them the assignee is the person who can prosecute the suit.

The distinction between a suit which is commenced after bankruptcy and one which is pending when the bankruptcy occurs is very material. By the provisions of the bankrupt act the one may be revived in the name of the assignee. "The *assignee* shall, if he requires it, be admitted to prosecute." This implies that if he does not it shall proceed in the name of the bankrupt, such having been held to be the rule in England.

But as to the remedy for matters not in suit when the bankruptcy occurs it is a suit by one who has no scintilla of title, insomuch as that by the English law, under non-assumpsit the fact of bankruptcy before suit was a good defense.

1 *Ch. Pl.*, 477; 7 *T. R.*, 397; *Bul. N. P.*, 153; *Lawes on Assumpsit*, 713. 98 US. 27. 12 Wal. 381.

This is not a case for amendment or substitution, as it would be the introduction of a new party into a suit where the party before the Court had no title.

1st By 2 years for writ of error
2nd By two years for assignee to sue

But if it was, the action is barred. It is as to the statute of limitation a new suit upon a new title.

Sicard vs. Davis, 6 *Pet.* 124;
Wilkes vs. Elliot, 5 *Cr.; C. Crt.* 611;
Miller vs. McIntire, 6 *Pet.* 61;
Crofford vs. Cothern, 2 *Sneed*, 492;
Bank of Tenn. vs. Skillern, 2 *Sneed*, 698, 700.

See also 11 Wend. 526. 528.

The writ of error is a new suit.

2 *Saund*, 101; *Hawkins vs. Thornton*, 1 *Yer.* 146.

The assignment of errors at Common Law, was subject to plea, as of release of errors.

Sho. 50; *Str.* 1215, 127, 683; 3 *Atk.*, 297; *so fine and five years lapse*, 1 *Rol.*, 766, *l* 10; *or Bastardy*, 1 *Rol.*, 766 *l.* 20; *or Stat. Lim. Str.* 1055; *B. R. H.*, 345.

But the practice in this Court is to hear the matter of a plea upon a motion to dismiss, and proof of the facts.

Cleveland vs. Chamberlain, 1 *Bl.*, 419;
Lord vs. Vesey, 8 *How*, 254.

The record also shows that this writ of error is prayed at the suit of S. Mosby, and the record shows, fol. 298, that S. Mosby, (misprinted S. Masley) is assignee of the judgment. It is also clearly shown by the indorsement there that he is the same as the S. Mosby who is surety and party, by the direction that if the judgment is levied of the other surety it is to be for one-half only. It thus clearly appears that Mosby is the owner of the judgment which he is seeking to reverse. He is thus *dominus litis* on both sides.

Cleveland vs. Chamberlain, 1 *Bl.*, 419.

Mosby having bought the judgment, not paid it, it can be no benefit to him to reverse the judgment, for he would be entitled to no relief against Brinkley's estate.

Upon the merits of this case the material facts are that Brinkley had leased the premises for five years from the 1st day of July, 1859, and had taken promissory notes for the rent. This lease was unexpired, and the tenants were in possession, when, on the 6th June, 1862, the Federals occupied Memphis. The legal position of the parties then was, that the lessees were the owners of the term yet to come in the premises, and Brinkley the reversioner, with no present title or property in the premises. He was, however, the owner of the rent notes, and these were the only property which he had subject to be abandoned. The thing seized, as is admitted by appellant's counsel, in his brief and argument, was the real estate. This was not abandoned by Brinkley, for he had no present right, and could not have taken possession by any legal act from his tenant. It was not his in such a way that it could be abandoned.

About Aug 1. 1862. an A.D.M. U.S.A. seized the premises. By what authority does not appear

Gates & Wood had not abandoned it. They were there by their tenants and by themselves. They had not abandoned their property—the lease—and it was not subject to seizure,

for they, though sympathizing as Brinkley was, with the Confederates, were at Memphis.

But Brinkley had not abandoned anything in Memphis, When the occupation occurred Brinkley was in the South on private business. He testifies that he was not occupying any position in the Confederate service, fol. 225¼, his business, not connected with military operations at all.

The law of Tennessee and the law of Louisiana are legal antipodes. The one maintains in the strictest form the common law rule that the only eviction of a tenant which can entitle him to a release from the rent, is one by lawful authority. The other that any eviction by paramount or irresistible force is a release. In Tennessee we hold that a seizure for any public purpose is the tenant's loss. In Louisiana the reverse. There a seizure by Confederate authority would have been equally effectual. In Tennessee they would be equally ineffectual. The case of Banks vs. White, 1 Sneed, 613, is full to this point and to the strictness of the law there.

In Louisiana, if the house was lost to the tenant by any act of God or the public enemy, the loss was upon the landlord. In Tennessee upon the tenant. It was enough to show in the Louisiana case that the property was taken from the tenant by Federal military authority, rightful or wrongful was immaterial, under their code both equally effectual. It was not a matter to be decided there whether the abandonment was one that justified the seizure, and as I read the case it was not considered in that view. That point was not contested in argument as far as appears from the report, and no discussion is had of what constitutes an abandonment within the sense of the act of Congress. It was enough in that case that the property was seized as abandoned. In Tennessee it can only have the effect in case the seizure was in all respects legal, as being according to the laws and usages of war, or authorized by the acts of Congress. That case, too, was concluded upon another point which was calculated to throw the Court off from any labored examination of this branch of the case, the statute of limitations.

The case of Harrison vs. Myer, 92 U. S. 111, therefore does not control the case. Under the law of Louisiana the landlord is required to keep the tenant in possession and use of premises at all hazards. Whereas, in Tennessee the implied covenant is only as to title and acts by or under authority of the landlord which could affect the use of the property. The law of Louisiana is, "The lessee is only liable for the injuries and losses sustained through his own fault." "He can only be liable for the destruction occasioned by fire, when it is proven that the same has happened, either by his own fault or neglect, or by that of his family."

Code of Louisiana, Arts. 2691, 2693.

"It (the lease) is also dissolved by the loss of the thing leased."

Id., Art. 2699.

In Tennessee, on the contrary, it was held (Banks vs. White, 1 Sneed, 613,) that "It is no defense that the house was blown down by storm or consumed by fire (Monk vs. Cooper, 2 Strobh, 763, 1 Term R., 310); or gained upon by sea (Dyer, 56); or the occupation rendered impracticable by the public enemies (Paradise vs. Jane, Aleyn, 26.") This case shows the rule in Tennessee. Under the Louisiana law, the tenant being evicted, the landlord's covenant is broken.

In Harrison vs. Myer it seems to have been conceded that the property was abandoned by the owner. Such is not the case here. Brinkley is called upon to answer on oath and does so answer, denying that he ever abandoned the property in question, stating that he left Memphis on private business, and returned in 1864, during the Federal occupation and long before the close of the war. He testifies to the same effect in his deposition. This answer under oath can be overthrown only by the testimony of two witnesses to the contrary, which the record does not furnish. The witnesses do not even pretend to any personal knowledge of Brinkley's movements or motives during his absence from the city. In what sense can it be said the property was abandoned, so far

as he was concerned? The act of July 2d, 1864, declares that "property, real or personal, shall be regarded as aban- "doned, when the lawful owner thereof shall be voluntarily "absent therefrom, and engaged, either in arms or otherwise, "in aiding or encouraging the rebellion." In Hart vs. Reynolds (1 Heis., 217), the Supreme Court of Tennessee says: "As the act (July 2, 1864,) was passed upon the same "general subject, and refers to all previous acts, it may be "properly looked to for the purpose of ascertaining the mean- "ing of terms employed in the prior act." Can Brinkley be said to have abandoned the property in this sense? The proof shows he went away on private business, and returned on friendly terms with the United States authorities in the midst of the occupation, and utterly fails to show that defendant in error was "engaged, either in arms or otherwise, in encouraging or aiding the rebellion."

By the law of Louisiana the onus to prove the illegality of the seizure was upon the landlord, and any defect of proof was to his prejudice, but as before stated, the abandonment was not contested, and is assumed. Now in this case there is no proof of anything but a seizure by an A. Q. M., U. S. A. This only by parol—no attempt to show any order or authority is made, and objection is taken to the mode of proof. The most that can be assumed in the case is that the seizure was made. In the absence of proof its legality cannot be regarded as proved, and that is essential to the defense. This seems to have been the view of the Court in 9 Wal., 541.

Here the choses were promissory notes which were never seized

Again, in the 92 U. S. case, the authorities at New Orleans published an order *seizing* all rents due to parties not known to be loyal, and under the order the tenant attorned to the government authorities and paid rent to them. Where rents are seized that are due to a landlord, it may be said the property of the landlord is taken, but when the premises themselves are seized, after being demised for a term of years, under a law which defines an implied warranty to mean that the lessor has good title and will abstain from all acts tending to disturb the lessee's possession, how can it

be said that anything has been seized but the tenants' property, the lessee's term.

It is a universal principle that every act of summary and violent capture of the property of the citizen without notice is subject to be questioned when it comes collaterally in controversy. A man is concluded by a judgment. He is not by any mere act of caption, without notice, virtual or otherwise. It is true Congress has prescribed the mode in which relief shall be had against the United States, but the question here is, which is the proper claimant against the United States? If the money ever went to the treasury of the United States, whose money was it went there? If the property was not Brinkley's, or was not abandoned, or was seized without authority in any way, it was the money of the appellants and they must take the onus of the application. But if it was lawful seizure for lawful cause as the property of Brinkley, then it is he that must go to the United States.

Certainly if they took from Gates & Wood property to which Brinkley had never any claim, that was a matter that in a litigation between them could be set up. Or if they had seized the property of Owen as that of Brinkley, it would conclude no one. But the want of clearness, in fact, is not material to the principle. If it applies to the clearest possible case, it applies to all.

Under the act of 17th July, 1862, property of rebels thereafter giving aid to the enemy is to be seized, but is to be proceeded against *in rem* for condemnation, and upon condemnation it becomes the property of the United States.

2 *Brightly Digest*, 126, *sec.* 33.

Under the previous act of 6th August, 1861, only property used for insurrectionary purposes was subject to be seized, and it was subject to proceedings for condemnation.

These were in the nature of confiscation laws and required regular proceedings.

Congress having acted upon and declared in this civil war

what property should be subject to seizure, and the modern laws of war having restricted the ancient severity of the usage as to private property, the acts of Congress ought to be construed as controlling and as excluding the discretion of the military.

92 *U. S.*, 194.

This Court say: "For the purposes of capture, property found in enemy's territory is enemies' property, without regard to the status of the owner. In war, all residents of enemy country are enemies. Knowing this, but bearing in mind the 'humane maxims of the modern law of nations which exempt private property of non combatant enemies from capture as booty of war.' (Klein's case, 13 Wal., 137.) Congress passed the Abandoned and Captured Property Acts. The capture of hostile property was in this way authorized by the United States, even though it should be owned by private persons. The military authorities were permitted to make their seizures, &c."

92 *U. S.*, 194. 13 Wal, 137

The Court recognize cotton as forming an exception, but they state the rule fully in U. S. v. Padelford, 9 Wal., 540.

It is respectfully submitted that the fair import of this language is, that without these Acts the modern usage of war is obligatory on the military, and that their powers to depart from it depends upon the Acts of Congress.

If it is not it will at least require strict proof of action by the General in command to justify subordinates in going beyond the usages of modern warfare and the acts of Congress.

In the New Orleans case this was proved, and the order to seize rents was in evidence. Here is no such evidence.

So much evil and oppression may result from presuming acts of military power acquiesced in, to be by authority, that no such rule can be safely adopted. In a captured city complaints of the military are repressed by fear of molestation,

and much submitted to which would, in times of peace, be subject of complaint.

The act of 3d March, 1863, is not of such character as to require the Courts to give it a retrospective operation. While we regard the belligerents in a civil war as enemies, still, as war is sufficiently rigorous with all the ameliorations that Christianity and modern civilization can throw around it, the Courts, which are, at last, the palladium of liberty, ought to be slow to relax any hold that the legislature gives to the civil over the military power, and quick to seize upon any new safeguards of life and property in time of war.

Now I ask the Court to look to the act of 1863, sec. 53, providing for the appointment of special agents. It gives the power to the Secretary of the Treasury from and after the passage of the act. Of course such appointment afterward does not clearly indicate that things previously seized may not be taken by the agent so afterward appointed. But, as before stated, when the Court has the option to preserve a regular system of judicial proceding, or one of merely military and summary seizure, they will lean to the civil and civilized and modern and moderate rather than the rigorous. They will follow the preference of Courts for prospective rather than retrospective constructions. But look to clause 56, as given in Brightly, p. 201: "It shall be the duty of every officer and private who *may take or receive* any such abandoned property or cotton, sugar, rice or tobacco." Need I say that these words admit of no retrospective construction. It is true it afterward does use words, "or have it under his control," which may be strained to cover a retrospective construction, but I submit such is not the fair construction. What is hereafter received by any of these persons is to be by the person taking, or any other person having it from the first taker, delivered to the treasury agent. There is no word of clear retrospection in the act.

In 9 Wall., 538, this Court say the intention was that all property captured or found abandoned during the war after the date of the law, should be seized.

See also Act of Mar 3 1863. Bo. Dig p 281. § 35